

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 IN RE:

5 GARLOCK SEALING TECHNOLOGIES, No. 10-BK-31607
6 LLC, et al,
Debtors.

VOLUME XIII-B
AFTERNOON SESSION
7 WEDNESDAY, AUGUST 7, 2013

8
9 TRANSCRIPT OF ESTIMATION TRIAL
10 BEFORE THE HONORABLE GEORGE R. HODGES,
UNITED STATES BANKRUPTCY JUDGE

11
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| | DIRECT | CROSS | REDIR | RECROSS |
|----------------------|--------|-------|-------|---------|
| Joseph Rice..... | 3575 | 3622 | 3669 | |
| James L. Patton..... | 3672 | | | |

E X H I B I T S

| <u>Debtors' Exhibits No.:</u> | <u>ADMITTED</u> |
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P R O C E E D I N G S

(On the record at 1:46 p.m.)

DIRECT EXAMINATION CONTINUES

BY MR. SWETT:

Q. Mr. Rice, since the onset of the Babcock and Wilcox bankruptcy and others that followed, have you been significantly involved in officially appointed asbestos creditors committees other than that of Garlock?

A. Generally speaking, the way the bankruptcy courts have done that is they've appointed an asbestos victim to the committee, and then the asbestos victims have asked their lawyers to represent them on the committee. So Ness Motley and/or Motley Rice, the law firm's changed just through evolution, has had a claimant appointed to most of if not all of the major bankruptcies and many of the smaller ones. I have been the representative for the claimant on the committee. I have chaired quite a few of those committees and been on the negotiating committee, which is usually two or three people, on almost all of them.

Q. Were you on the negotiating subcommittee in the W.R. Grace case?

A. Yes, I was.

Q. Can you explain to the judge the context in which an agreement was reached between the debtors and the

Direct - Rice

1 other constituencies in that case?

2 A. Each of these bankruptcies presents different
3 issues. W.R. Grace had asbestos mining operations, as
4 well as product situations, and they had other
5 non-asbestos issues. With the W.R. Grace bankruptcy we
6 had environmental claimants that were competing for the
7 limited assets of W.R. Grace. During the pendency of the
8 bankruptcy, the federal government, the Department of
9 Justice, indicted W.R. Grace for environmental penalties
10 and criminal penalties. So we had the Department of
11 Justice at the table, or lingering out there.

12 W.R. Grace had substantial property damage,
13 asbestos liabilities, because they made attic insulation
14 and some of it was sprayed on insulation. Zonolite was
15 their predominant product. So we had a substantial
16 property damage component. There had been some corporate
17 shifting of assets. So we had Fresenius and Sealed Air
18 involved. And there was substantial bank debt, some
19 secured bank debt. And we also had substantial bond --
20 bonds outstanding that were trading. And right after the
21 bankruptcy was filed, an entrepreneurial type financial
22 gentleman got control of a large volume of the bonds, and
23 the bankruptcy court appointed a separate committee for
24 those creditors. And he became the spokesman for that
25 committee. Mr. Ted Wexler was his name. So he was

Direct - Rice

1 quite a prominent player in W.R. Grace. So in W.R. Grace
2 we had a lot of moving parts.

3 We, ultimately, after a number of years,
4 Mr. Wexler, who is now no longer with us. He has now
5 been selected by Warren Buffett to be one of two of
6 Warren Buffett's heir apparents. He and I started trying
7 to put together a Grace deal. The Grace stock -- during
8 the bankruptcy process, the company was performing pretty
9 well. And his argument was there's no hurry to get out
10 of bankruptcy, although it was costing them a lot of
11 money. But, the reality is they wanted out.

12 And we were able to negotiate a separate
13 settlement with Sealed Air, but it was contingent upon
14 524(g). And we had estimated the asset value of Garlock,
15 and I don't know that I can disclose those numbers. I
16 mean, not Garlock.

17 Q. Grace?

18 A. Grace. We had estimated a value and it wasn't
19 enough to pay what the banks wanted, what the
20 environmental claim potentially was, what the Department
21 of Justice was saying they may want, and what the
22 asbestos claimants needed. So we decided that what we
23 wanted to do was get the best deal we could get that was
24 fair to us and not compete with the Department of Justice
25 and the state of Montana and the other environmental

Direct - Rice

1 claims and left Grace to deal with the banks and the
2 question of post-petition interest to the banks.

3 Q. Was there a significant complication involving the
4 asbestos claimant's committee's own constituency?

5 A. We had a unique situation. Because Grace had a
6 mining operation in Libby, Montana and the -- it was
7 geographically located near the population center of
8 Libby, Montana, and there were a lot of allegations about
9 the tailings from the mining operation being used to pave
10 the streets and put in playgrounds and school kids
11 playing on the mountains of the mine through the years.
12 So there was a large number of alleged personal injury
13 claims arising out of Libby. That's an unusual situation
14 that we found in Grace.

15 It was exposure to asbestos for which Grace had
16 legal responsibility but it wasn't occupational exposure,
17 but it also wasn't household type exposure or considered
18 bystander exposure. So, yeah, that compounded it among
19 our constituency. And Libby had an representative on the
20 asbestos claimant's committee.

21 Q. By comparison to that complicated situation, how
22 do you regard this case?

23 A. This is a very straightforward case.

24 Q. How do you mean that?

25 A. This is -- to the best of my recollection and

Direct - Rice

1 knowledge, based on the review of the materials, this is
2 a question of, we don't have any real insurance disputes.
3 In Grace we had insurance disputes too. I left them out.
4 We don't have disputes with the trade. I think the trade
5 has been, you know, dealt with or is not impaired at all.
6 We don't have environmental claims.

7 We don't have a Libby-type situation. This is
8 just a question of what is the asset base that's legally
9 responsible for what amount of asbestos liabilities under
10 the applicable tort law or state law, at least as we see
11 it -- as I see it.

12 Q. What's the approximate value today of the
13 consideration that Grace and Sealed Air have agreed to
14 contribute to an asbestos trust?

15 A. Well, when we negotiated that settlement, we
16 negotiated for warrants from Grace on their stock, and
17 our negotiated price was at \$17 a share. At that time
18 the stock was working in the \$22 to \$28 range. During
19 the pendency of the appeal process, the trustees-to-be
20 and the futures claim rep, Mr. Guy, Mr. Warren's client,
21 decided to liquidate our warrant requirements. They sold
22 those with the consent of the company. They had a deal
23 for about \$490 million using, I think, \$54 or \$55 a share
24 as the strike price. By the way, the stock stays at \$73
25 a share. But I think the asset value now is predicted to

Direct - Rice

1 be around \$3 billion to \$3.1 billion on present value.
2 If we had kept the stock, it would be closer to \$3.3
3 billion, but it could go down.

4 Q. What is the status of the plan of reorganization
5 in Grace now?

6 A. My understanding, it's still in part. In the
7 Third Circuit the issues -- the banks have reached a
8 resolution, I think, that's been finalized with the
9 company on post-petition interest. And the Third Circuit
10 has recently dismissed the appeal by Garlock based on
11 standing grounds, that they never had standing in the
12 bankruptcy court as I read the opinion, and it should be
13 moving forward. I can't tell you what the final
14 schedule's going to be.

15 Q. Was it an aspect of Garlock's objection to the
16 plan that equity was retaining estates?

17 A. Yes. Garlock's -- one of Garlock's positions they
18 were espousing was that the Garlock -- excuse me, the
19 Grace plan, which had allowed Grace to maintain some
20 equity subject to the environmental claims, subject to
21 the Department of Justice claim. But as far as our plan,
22 they retained some rights of equity and violated absolute
23 priority rule.

24 Q. What other significant asbestos reorganizations
25 have you been an active participant in the deal making

Direct - Rice

1 side of?

2 A. The second Johns-Manville plan. Owens Corning.

3 By that time, Fibreboard had been bought by Owens

4 Corning. So that was a joint plan. Celotex. B&W.

5 Pittsburgh Corning. W.R. Grace. USG. Federal-Mogul,

6 which was Turner and Newall. I negotiated that with Carl

7 Icahn. Halliburton, the pre-pack, as well as the

8 bankruptcy. Honeywell, the pre-packed deal as well as

9 the bankruptcy. I was counsel in the Shook & Fletcher

10 pre-pack. I was counsel in Congoleum pre-pack with Perry

11 Weitz. I was counsel with Combustion Engineering in the

12 Combustion Engineering pre-pack. And when I say counsel

13 for them, I was counsel in the pre-pack with those guys.

14 Q. Let the record reflect Mr. Walker has put on the
15 screen the bankruptcy wave slide Garlock has prepared.

16 A. Armstrong.

17 Q. Okay.

18 A. Looking at that screen. In 2000, I was on the
19 negotiating committee for Babcock, Pittsburgh Corning,
20 Owens Corning, and Armstrong.

21 In 2001, I can't tell you who Skinner Engines is.
22 Bartells was a small bankruptcy. U.S. Minerals was a
23 very small bankruptcy. Murphy Machine Services? I don't
24 know who that is. Insul Company, I don't know them by
25 that name. Same thing with Swan Transportation. I was

Direct - Rice

1 involved in Grace. I was involved in USG. I was
2 involved in Turner and Newall, which I call
3 Federal-Mogul.

4 I was involved in GAF. I was involved in a lot of
5 different ways in GAF in negotiations working with the
6 committee and as a defendant in the lawsuit that GAF
7 brought against several of the plaintiffs' lawyers for
8 threatening nuclear war on them. Kaiser, I was involved
9 in. Harbison Walker and A.P. Green are combined. Shook
10 & Fletcher, I was involved in the pre-pack. I was not
11 involved in Porter Hayden.

12 Q. I think that's enough to give the Court a feel for
13 your role in this deal making. And I'd like to ask you
14 this question. Based on that experience from your
15 perspective, what is the most important factor in
16 commanding the assent of the asbestos personal injury
17 constituency to a proposed plan of reorganization?

18 A. Well, our constituency wants to feel that they've
19 been treated fairly and that the plan is a viable plan
20 that doesn't violate the principles of our constitution
21 and the principles of tort law and is a fair resolution,
22 given all the facts and circumstances that we have to
23 deal with. We recognize we're in bankruptcy court. We
24 recognize that our Congress has created power within the
25 bankruptcy court. And it's created a specific rule

Direct - Rice

1 called 524(g) that was created with the help of Senator
2 Heflin to provide for a highly unusual situation where
3 there can be an injunction against future yet unknown
4 claims through the bankruptcy process in the asbestos
5 context. So we just want to make sure the system works
6 fairly.

7 Q. As you look at the slide, the bankruptcy wave, do
8 you think it's a fair depiction of the state of play in
9 the asbestos tort system and asbestos bankruptcies during
10 the period covered by that slide?

11 A. Well, you know, I'm not exactly sure what all the
12 testimony was around this slide. But if you look at the
13 2000 and 2001 timeframe, the ones in red, that's -- I
14 don't know where Pittsburgh Corning -- yeah, it's in
15 2000. Those were significant national players. They
16 were in a lot of cases throughout the country. A lot of
17 the others are very small regional-type bankruptcies.
18 And, you know, I've heard from time-to-time discussions
19 about \$30 billion being put into the bankruptcy trust
20 process. I don't have that by dollar amount. But my
21 guesstimate or estimate would be that the substantial
22 part of that money is in the bankruptcies that were early
23 on in 2000 and-2001. The rest of those companies were
24 generally niche players or smaller players or had, you
25 know, very -- or had much lesser roles in the -- like

Direct - Rice

1 Shook & Fletcher. I mean, Shook & Fletcher was an
2 insulation -- it wasn't even a manufacturer. It was an
3 insulation company located down in the southeastern part,
4 I think it was Alabama, that did work, you know, around
5 the southern side. They didn't even have a product.

6 Porter Hayden. Very similar. They were in the
7 Baltimore area. So, some of these are not even
8 manufactured products. They would be companies that used
9 other company's products, be it Garlock or Owens Corning
10 or Johns-Manville or others. Because you've got to
11 remember, the legal responsibility is not limited to
12 products itself.

13 AC&S is up there. AC&S was Armstrong Contracting
14 and Supply, and they are also involved in the Armstrong
15 bankruptcy. But they didn't make a product. What they
16 did is they went to job sites and they insulated pipes.
17 They worked with boilers. They repaired buildings. They
18 repaired stuff. And they would buy asbestos products
19 from other companies and use them and they, under the
20 law, have legal responsibility.

21 Q. Mr. Walker, could you put up on the board,
22 please, ACC-822? This is something we pulled off of
23 LexisNexis from the Mealey's Litigation Reporter,
24 asbestos from 1993. Would you go down, please, to the
25 Rice & Motley article? Down here at the bottom you will

Direct - Rice

1 see "The Carlough Settlement-Blueprint for a Sane
2 Resolution to the Asbestos Problem" by Ronald L. Motley
3 and Joseph F. Rice. Is that an article that you
4 co-authored?

5 A. Yes.

6 Q. This is a response to a public publication by Fred
7 Baron?

8 A. An article by Fred.

9 Q. He was opposing the settlement and you were
10 proposing it?

11 A. That's correct.

12 Q. Let me just read this out. Numbered paragraph
13 two. The Baron article states that only, "The smaller
14 asbestos companies with limited insurance coverage have
15 filed for bankruptcy protection as a result of their
16 asbestos liabilities. This is simply not true. Several
17 of the major defendants in the asbestos litigation have
18 gone into bankruptcy, including Johns-Manville, H.K.
19 Porter, Celotex and Eagle-Picher. All in all, 17 former
20 asbestos defendants, representing one-half to three-
21 quarters of the original liability share, have gone into
22 bankruptcy. These bankruptcy filings have increased
23 costs substantially, caused significant delays to the
24 plaintiffs, and increased greatly the financial pressures
25 on the remaining solvent defendants."

Direct - Rice

1 It goes on to explain what the benefits of the
2 proposed settlements would have been in your view to
3 addressing that situation. In light of that description
4 of the status of affairs in 1993, and calling your
5 attention back to that slide about the bankruptcy wave of
6 the early 2000s, do you think there was anything unique
7 or unprecedented about that period in the 2000s?

8 A. No. It was just a continuation. It's just a
9 continuation. I mean, as this whole asbestos litigation,
10 referred to by the Supreme Court as an "elephantine
11 problem" -- I mean, it's massive litigation, hundreds of
12 thousands of people that were exposed to asbestos in all
13 different walks of life and industries, and it's taken a
14 toll on the companies that profited from the use of that
15 product and the sale of that product.

16 And as we've gone through, many companies have
17 sought protection in bankruptcy to try to reorganize. I
18 think 95 or maybe 99 percent of these have been
19 reorganizations. A lot of them had other issues, like
20 W.R. Grace, where it wasn't just asbestos. They've
21 sought reorganization, but that's just a part of what
22 we've lived with in asbestos litigation for the last 30
23 years that I've been doing this.

24 Q. Now your own role in life, I take it from your
25 testimony, shifted at some point from in the trenches

Direct - Rice

1 litigation of the cases to resolution issues and
2 responses; is that not correct?

3 A. Yeah. Ron and I formed a view back in the '90s
4 that if we could do reasonable resolutions that helped
5 companies stay solvent longer, reduced their defense
6 costs, reduced their resolution costs but still pay our
7 clients fairly in the long run, victims of asbestos would
8 be better off because they would be there to get
9 compensation as those presently progressed to more
10 serious disease and those in the future got diagnosed.
11 So we set out to try to do creative resolutions. And
12 we've resolved thousands and thousands of cases against
13 multiple defendants over the years. But the courts have
14 not accepted the class action approach.

15 And then the pre-packed bankruptcy was an
16 approach, and that was successful for a while, but the
17 insurance industry didn't like that. So, you know, we've
18 been out front in trying to be creative to resolve the
19 problem.

20 Q. Am I correct to assume that being productive at
21 that level requires you to keep yourself abreast of
22 developments in actual litigation of the cases?

23 A. Absolutely. And to be sure that the constituency
24 knows that I'm doing that so that I carry, you know, some
25 degree of credibility with my colleagues when I come

Direct - Rice

1 forward or work with them on a resolution.

2 Q. I'd like to shift your focus now to the process by
3 which an individual asbestos personal injury claim is
4 prepared from the standpoint of the plaintiff, with
5 specific reference to the development of the
6 identification of significant exposure sources for the
7 given client.

8 MR. CASSADA: Your Honor, I object. I don't
9 object to Mr. Rice testifying to these matters as to his
10 own clients. I don't believe he's been described as an
11 expert or written an expert report that describes the
12 affairs of these other law firms have been handled.

13 MR. SWETT: That's not what we're going to do.
14 We're going to elicit fact testimony. Mr. Rice was
15 deposed way back in the wintertime on all subjects
16 Garlock chose to ask him about.

17 THE COURT: We'll let him testify. Go ahead.

18 BY MR. SWETT:

19 Q. Please describe the initial stages of working up a
20 case from the plaintiff's point of view with respect to
21 the identification of possible sources of recovery.

22 A. There's not one model by itself. Because you've
23 got to remember that sometimes the claimant comes to you
24 and the claimant is alive and able to deal with you and
25 you can get firsthand information from the claimant.

Direct - Rice

1 Many times my client is the widow or the estate of the
2 claimant, and that's a different model of how you build
3 your case. Basically, we come in and we try to
4 understand what the claimant did and where the claimant
5 worked and the type of work.

6 As time has developed, sometimes we'll file the
7 cases quicker, particularly if the individual is living.
8 Or if it's a rocket docket, like in Nevada. I can file a
9 case in Nevada, and if the claimant's over 70 years old
10 he gets a rocket docket. Virginia's got a rocket docket.
11 So when you file, it is depending on where your
12 jurisdiction is going to be, where your revenue is going
13 to be.

14 But we build the best we can at what the client
15 can tell us. And then we try to build from that from
16 finding co-workers or finding people that did the same
17 kind of work. So if you tell me that the guy was a
18 boilermaker, then I'm going to talk to other boilermakers
19 about what they might do. Now we've been doing this for
20 30 years in more than 20 states. So we do our best --
21 and today it's a lot easier than it was in the '80s and
22 '90s at cross referencing that data and co-workers.

23 Q. Why is that easier?

24 A. Well because, like, there was a gentleman -- by
25 example, there was a gentleman that worked at the

Direct - Rice

1 Charleston Naval Shipyard. His name was Paris Jenkins.
2 Everybody knew Paris. He was a big jolly Afro-American
3 guy that was -- he was the supply house. So he could
4 tell me products that were used at the Charleston Naval
5 Shipyard all over the place because he was in the supply
6 house and he delivered them and sent them out. Those
7 products may or may not have been sent out in a box that
8 had the name on it. He may have cut the box. The box
9 could have been damaged in shipping and he threw it all
10 in a buggy or a loader of some type and delivered it to
11 the site. He knew the product, but the guy that was
12 working there would never have known the product because
13 Paris knew it, because he, you know, it was in the supply
14 house.

15 Same thing in the railroad industry. They all had
16 a central supply. So you use data, invoices, co-workers,
17 history. You know, the defendants put out pictures of,
18 you know, their product being used on a particular job
19 site. Well that then becomes evidence for me that their
20 product was used at the job site. So when my client
21 comes in, we do our best of identifying the type of
22 defendants that will most likely be involved in his case
23 and we file our claim. Depending on the rules of that
24 jurisdiction, the timing and what state of the litigation
25 we were in, we'd start working up. We'd get the client's

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1 information, but I'm not going to work up a case and go
2 to get the co-workers and try to start matching up
3 invoices and contact other, you know, lawyers to get help
4 until I know I got a trial date, because that's what's
5 important.

6 So at any given time, my case is going to have
7 some partial information available, but it's not going to
8 have complete information until it's time for me to do
9 it. Because there's only so many lawyers I can pay to do
10 work, and we concentrate on the front end cases that are
11 up for trial. Depending, again, on the jurisdiction and
12 the nature of the case, we may concentrate on filing some
13 bankruptcy claims first. Sometimes the clients want to
14 do that; sometimes they won't. Sometimes if it's a, you
15 know, a worker who says I want to be sure that my wife is
16 -- the house is paid for or my medical bills are covered,
17 then that may dictate how you try to manage the case.

18 Q. Over what period of time, generally speaking, does
19 a case proceed from the initial interview to the point
20 where you finally close the file?

21 A. Well that's changed over time. Because if I were
22 in the late '90s and the early 2000s and I was still
23 trying nonmalignant cases, then I'd be working those
24 cases up, maybe, in a two or three year period of time.
25 But right now, in South Carolina, if I have a

Direct - Rice

1 nonmalignant case, I can't take it to trial until it has
2 a certain level of impairment. So I don't work that case
3 up, other than getting personal knowledge, until it's
4 time to process that case. If I'm in, you know, Virginia
5 and I've got a living meso and I'm on a rocket docket,
6 you know, and I get a trial in six months, we jump on
7 that case and prove it up. So it's going to depend on
8 the circumstances. On average, it's probably a couple of
9 years, unless it's a living case, a living meso case.
10 And on the nonmalignant cases it's longer than that.

11 Q. How, if at all, has the process of building
12 product identification evidence been affected by the
13 bankruptcies of the various entities?

14 A. Well, obviously, Manville was an easy target for
15 exposure and liability. So when they were there to pay
16 the value that the clients wanted, it was a lot easier.
17 But as people disappeared, we have to work harder and dig
18 longer and do more searching and go look for more
19 invoices and more documents and more ways to get creative
20 to try to find the exposures. And that's continued as
21 the evolution of the litigation has continued. And a lot
22 of times we'll learn during the bankruptcy process of a
23 given company about legal responsibility they had for
24 products that we never knew about.

25 Q. How do you learn that?

Direct - Rice

1 A. Well when the debtor is no longer in control of
2 its historical documents and its historical files because
3 part of the bankruptcy process, these debtors, generally,
4 they want out of the asbestos business, which includes
5 the asbestos discovery business. And they turn over all
6 -- they'll warehouse or they'll turn over their
7 databases, their historical records -- we get access --
8 the trust then stands in the shoes of the debtor. So if
9 they've had a regional law firm that has represented them
10 for 15 years and that regional law firm has put together
11 a database of all the job sites and all the products, et
12 cetera, and all the co-workers, that all comes to the
13 trust.

14 Now the trustees, their obligation and duty's
15 different. Their obligation is as a fiduciary to the
16 beneficiaries of the trust to make the process as
17 efficient as possible to fairly compensate them to the
18 maximum extent they can with their limited access.
19 They're not interested in hiding information. So the
20 trust will organize, and they put out these job site
21 lists. If a defendant had a settlement agreement with
22 Weitz Luxenberg in New York where they agreed they were
23 at the Brooklyn Naval Shipyard from 1958 to 1965, and
24 that was the standard by which they settled with Weitz
25 and Luxenberg on cases, that now becomes knowledge to

Direct - Rice

1 everybody that's got a case at Brooklyn Naval Shipyard.
2 I would not have known that before because that
3 information is put forward.

4 The other thing that's made a big difference is
5 technology. You know, when I started practicing if you
6 deposed a co-worker in San Francisco on Monday morning, I
7 might find out something about it in a week or two if I
8 asked the right question or if, you know, you and I had a
9 business relationship of some type. Now when you depose
10 that coworker, that deposition, when you finish it at one
11 o'clock on Monday, is on the plaintiff's list serve at
12 1:30. So now everybody can do word searches of job sites
13 and all this information. But technology's made the
14 information much easier to share and people are more
15 willing to share it.

16 Q. Your firm received Mesothelioma claim
17 questionnaires in this case?

18 A. I think we did some.

19 Q. And responded to them?

20 A. We did.

21 Q. Based on your understanding of how cases are
22 developed -- let me back up. As a person experienced in
23 bankruptcy, you have an appreciation for the impact of
24 the automatic stay?

25 A. Yes.

Direct - Rice

1 Q. What does that do to your cases?

2 A. It stays it, period. I can't do any discovery.
3 I'm not going to get any additional information about
4 that debtor from that debtor process. I have no legal
5 rules or legal tools available for me except through the
6 bankruptcy process.

7 Q. And with no trial date, do you routinely devote
8 more time and effort to those cases that are stayed?

9 A. No.

10 Q. Coming back to the questionnaire process. Having
11 regard to the manner in which cases are prepared, the
12 level of effort and time that goes into that process and
13 the impact of the automatic stay on claims of your
14 clients against Garlock, do you believe that the
15 completed questionnaire responses would give the court a
16 fair picture of what those claims would look like if they
17 were fully prepared for trial?

18 A. No. It can't.

19 MR. CASSADA: Your Honor, I object to the
20 question. He's not laid the foundation to show that
21 Mr. Rice has even reviewed or is aware of the personal
22 injury questionnaires. He may be aware of the ones his
23 firm has filed.

24 MR. SWETT: That's what I'm talking about. Isn't
25 that clear?

Direct - Rice

1 THE COURT: I'll overrule the objection. Go
2 ahead.

3 THE WITNESS: I work with about 40 law firms now
4 as co-counsel around the country in different states.
5 And we have a seminar every 18 months at our firm called
6 the Ness Motley co-counsel seminar or TACTIX, now we call
7 it, because you need an acronym to do things these days,
8 where we exchange information and you talk about stuff.

9 What's in my file on a given case on a given day
10 is a snapshot of what's in my file on a given day.
11 Unless that case is past all of the deadlines for trial,
12 it's not going to contain all of the information I'm
13 ultimately going to put in there for purposes of trial.
14 And it's not going to contain -- I'm not going to know
15 how I'm going to try the given case until I focus on that
16 case. So all I can tell you at any given time is what's
17 in that particular file or that I've already made a
18 connection to that particular claimant.

19 BY MR. SWETT:

20 Q. Let's take it back into the tort system context.
21 Forget about bankruptcy. Forget about the stay. You're
22 preparing a case. You're on file now and you're
23 receiving discovery from -- written discovery demands
24 from the various defendants. Is it your practice to
25 respond fully to the discovery?

Direct - Rice

1 A. We'll certainly do our best to do that as we
2 interpret the rules.

3 Q. Do you interpret discovery responses calling for
4 exposure information to require you to do more than
5 provide the exposure information that you have developed
6 for use in the particular case?

7 A. I think when I'm answering discovery on a case, I
8 answer it to what I know about that case at that time in
9 that file. And if I learn more, decide to do something
10 different, decide to call more witness, find a witness
11 that's going to add information, depending on the
12 jurisdiction. In most jurisdictions you have update
13 responsibilities. So those will change from time to
14 time. But I don't have to exhaust what I'm going to do
15 in the future to prepare that case for trial at the time
16 I answer the initial interrogatory.

17 Q. And if you're subject to supplementation duty, do
18 you abide by that?

19 A. Yeah, I supplement it.

20 Q. Now, suppose the defendant in your case is wanting
21 to point the finger at some third person or perhaps some
22 bankrupt. Apart from responding honestly to the
23 defendant's discovery, do you regard yourself as
24 obligated in any way to lend your time and efforts to
25 that defendant's purpose of building a case against that

Direct - Rice

1 third person?

2 A. I'm not responsible for putting on their defense.
3 I'm responsible for answering the interrogatories which
4 is generally, tell me, you know, what your client's going
5 to say, tell me what witnesses you're going to call, and
6 tell me what those witnesses are going to say. And
7 depending on what the question is, I'd respond to it.
8 But that's generally been the standard interrogatory type
9 inquiry and that's what we try to answer.

10 Q. Mr. Walker, would you put up on the board,
11 please, ACC-417? Let's highlight the title. This is a
12 pleading from -- a paper under the caption of the W. R.
13 Grace bankruptcy and it says Motley Rice, LLC's
14 objections and responses to debtor's third set of
15 interrogatories to certain asbestos personal injury
16 pre-petition litigation, claimants' law firms.

17 If we go back to the very last page, the
18 Certificate of Service and highlight that. You will see
19 that it has the date of the 14th of November 2005. I'm
20 sorry. That's the wrong certificate. That's an
21 attachment. Go to the verification which is page 26.
22 Can you see that?

23 A. Yeah, I got it up here.

24 Q. That's the verification signed by John E.
25 Herrick?

Direct - Rice

1 A. John is one of my attorneys in these asbestos --

2 Q. Can you identify this document to the Court as an
3 objection in response to discovery served by the W.R.
4 Grace debtors which was submitted by your firm in
5 response?

6 A. Yeah. This is -- W.R. Grace was one of the first
7 bankruptcies that we started dealing with in this
8 questionnaire process, and David Bernick was counsel for
9 W.R. Grace. He's with Kirkland and Ellis. And David and
10 I had done the pre-pack negotiations in Combustion. I've
11 known David for years. David was trying to espouse to
12 the court that every file had the information that was
13 going to be there at the time the plaintiff had the file
14 open, and that was just ludicrous. So we filed an
15 objection to some of the arguments that were being made,
16 and this is the objection that we put together and John
17 sent it out.

18 Q. Your Honor, I just wanted to identify this for the
19 record. It says what it says, and we will make use of it
20 in --

21 THE COURT: All right.

22 MR. SWETT: -- as appropriate in post-trial
23 submissions.

24 BY MR. SWETT:

25 Q. Let's talk about voting in bankruptcy cases.

Direct - Rice

1 You're familiar with the process by which debtors in
2 asbestos bankruptcies solicit the approval of creditors
3 for proposed plans of reorganization?

4 A. Generally. Yes, sir.

5 Q. You know that solicitation procedures orders are
6 issued with forms of a ballot?

7 A. And instruction. Yeah.

8 Q. And you have an awareness of the practices
9 followed by your firm with respect to deciding which of
10 your clients ought to vote in a given case?

11 A. Yes.

12 Q. Can you explain to the Court how you go about
13 making those decisions?

14 A. Well when it's time to vote, we will -- in the
15 last X number of years we've had computers. We will go
16 to the computer to our case management system and we will
17 generate a list of claimants that have filed suit against
18 the given debtor that's involved. We will match that
19 against the database that -- of the occupations and the
20 type work they did. We do our best to try to identify
21 the people that will have claims as that term is defined
22 in the bankruptcy, or that have claims as that term's
23 defined in the bankruptcy against that debtor. And we
24 vote those claims with the understanding that we vote
25 based on our interpretation of those that will have

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1 claims, because there's pluses and minuses for claimants
2 to vote.

3 There are certain provisions in the trust
4 distribution processes that are vested if a claimant
5 votes. Whether he votes for or against the plan, there
6 are certain grandfather provisions like, you know,
7 diagnosis based on "consistent with" versus, you know
8 "above and beyond" or "clear and reasonable." So we vote
9 in that fashion. We don't vote everybody. We vote the
10 people that we think can make the connection to a claim.

11 Q. I'm not sure that your reference to the difference
12 in medical standards that might depend upon whether or
13 not you voted came out clearly. Could you explain that a
14 little bit more?

15 A. Well there are certain -- the bankruptcies provide
16 some standards that are much stricter than the tort
17 system requires. One of those that comes to mind is that
18 if I'm offering a doctor in trial and the doctor can
19 testify within a reasonable degree of medical certainty
20 or probability that this injury is consistent with a
21 history of asbestos exposure, in 95 percent of the courts
22 that's admissible evidence.

23 Some of the criticism by defendants has been
24 "consistent with" shouldn't be a legal standard, it ought
25 to have that it is, you know, a stronger standard. So

Direct - Rice

1 one of the issues in some of the early bankruptcies or
2 some of the 2000 era bankruptcies has been, are they
3 going to accept a diagnosis that says "consistent with"
4 or are they going to want a stronger diagnosis? And one
5 of the things that claimants don't want to do is to have
6 to go back where existing medical reports have already
7 been prepared for cases and they used the "consistent
8 with" standard because that's what the tort law allowed
9 and have to redo those just to get a bankruptcy claim
10 filed because the bankruptcy changes the wording. So
11 they're grandfathered in. But they're only grandfathered
12 in to the extent that you vote one way or the other in
13 the bankruptcy process.

14 So it's an efficiency thing that benefits. So it
15 saves my clients a lot of money if they don't have to go
16 back and redo those medicals if that happens to be their
17 issue. That's just an example.

18 Q. And the kinds of plans you're talking about are
19 voted up or down on consent; right?

20 A. That's correct.

21 Q. They're only operative if there's adequate
22 creditor consent?

23 A. That's correct. These are the ones we're talking
24 about, the Master Ballots.

25 Q. How about in terms of the trust payment

Direct - Rice

1 percentage? Is there any advantage to being a voting
2 claimant when it comes to the operations of the trust and
3 decisions with respect to whether or not to maintain the
4 existing payment percentage?

5 A. The trust grandfathered in, I think it's generally
6 three years to lock in the payment percentage; it may be
7 longer. I have to go back and look at the TDP to be
8 sure. But basically, if I'm a voting member, the trust
9 cannot change the payment percentage on me. Again, I
10 don't have to vote in favor. I just have to vote.

11 Q. So there are reasons to vote?

12 A. Absolutely.

13 Q. Do you -- as you understand it, in an asbestos
14 related bankruptcy, is the right or privilege of the
15 claimant, asbestos claimant, to vote in the case
16 dependent upon whether or not his asbestos claim against
17 that debtor arises from contact with that debtor's
18 product?

19 A. It does not.

20 Q. Explain that, please.

21 A. Well when you're voting on a bankruptcy plan, it's
22 generally the 524(g) plans. The defendant's looking for
23 a permanent injunction against any future claims and they
24 want to be sure that that injunction's as broad as they
25 can legally get it. So if you look at the definition of

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1 claim that is being barred or being channeled or being
2 enjoined, it is massively broad. It's disputed,
3 undisputed, something that may arise in the future,
4 something you may have. It doesn't say anything about
5 exposure. It doesn't say anything about product.

6 It is to actions that the debtor, whether it's the
7 debtor's product or the debtor's actions or the debtor's
8 failure to act or the debtor's installation or removal or
9 repair or design or suggestion. I mean, it's all the
10 broadest language possible. So that's the rules we have
11 to play by.

12 One of the things that I've learned over the years
13 is that once the trust gets control of the discovery that
14 the debtor had, invoices, sales records, history of job
15 sites, I increase the number of claimants that will be
16 able to meet the exposure requirements and the criteria
17 for exposure as set out in the bankruptcy by 25 or 30
18 percent.

19 Q. How does that counter?

20 A. I'll go back to the example with Perry Weitz at
21 the Brooklyn Naval Shipyard. If Pittsburgh Corning had
22 accepted the Brooklyn Naval Shipyard as an approved job
23 site from 1962 to 1965, then the trustees will accept
24 that. All I got to do is put my client at the Brooklyn
25 Naval Shipyard during '62-65 in an occupation that is

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1 probably more likely to have worked with that type of
2 product or around that type of product. I don't have to
3 prove product ID. So those job site lists give me a
4 whole new increase in claimants that are going to qualify
5 under the criteria.

6 So that's why, if it's a company that was a boiler
7 manufacturer like B&W, I'm going to vote not just the
8 people that sued B&W or that at the time, but I'm going
9 to look at my database for my current clients, anybody
10 that might have been working in the boiler room or around
11 the boiler while it was being installed or removed or
12 repaired, because those people will qualify for
13 compensation under that plan.

14 Q. Let's take a look at a definition of an asbestos
15 personal injury claim in the context of a reorganization
16 by calling up ACC-821. Your Honor, this is an excerpt
17 that we made from the fourth amended plan of
18 reorganization of Armstrong World Industries, Inc. as
19 modified. And at the definition section here we're going
20 to go to the second page of the excerpt and to Section
21 1.18 which is the definition of asbestos personal injury
22 claim for the purposes of that plan.

23 Mr. Rice, picking up on the point you were just
24 making about the breadth of the a typical definition of
25 asbestos personal injury claim in these 524(g)

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1 reorganizations. Can you drill down a little further
2 into the scope and sweep of this definition as it
3 pertains to the varieties of claims that might be
4 asserted against this debtor?

5 A. Well look at the third line where it starts demand
6 -- liquidated, unliquidated, fixed, contingent matured,
7 unmatured, disputed, undisputed, legal, equitable,
8 secured, unsecured, any theory of law, any theory of
9 equity, any theory of admiralty or otherwise. I don't
10 know how you can get any broader. Then it goes down to
11 asbestos or asbestos-containing products, or things that
12 was or were installed, engineered, designed,
13 manufactured, fabricated, constructed, sold, supplied,
14 produced, specified, selected, distributed, released,
15 marketed, serviced, maintained, repaired, purchased
16 owned, occupied, used, removed, replaced or disposed.
17 I mean, it's as broad as you can get. And that's what
18 the debtor wants the injunction to do. He wants the
19 injunction to get rid of anything anybody will ever dream
20 up that they could be responsible for, legally
21 responsible for. Not exposure but legal responsibility.

22 Q. Now, from the plaintiff's perspective anybody with
23 Mesothelioma has had contact with an asbestos-containing
24 material; correct?

25 A. It is our view that every Mesothelioma, if you can

Direct - Rice

1 show asbestos exposure directly, indirectly, bystander,
2 has a causal relief.

3 Q. That, of course, doesn't tell you necessarily
4 who's legally responsible for that.

5 A. No.

6 Q. Have you settled large numbers of asbestos claims
7 on theories other than the claimant's exposure to a
8 product made or distributed by the given counterparty?

9 A. Absolutely. Thousands.

10 Q. Under what sorts of circumstances?

11 A. Well, different circumstances. One that comes to
12 mind is Metropolitan Life Insurance Company. MetLife --
13 I've settled tens of thousands of cases with MetLife
14 under the theory that they conspired to alter the medical
15 literature back in the '40s and '50s. They deny it but
16 we've resolved the cases.

17 I settled several, well almost 90,000-plus cases
18 with Travelers Insurance Company on the theory that
19 Travelers violated the good faith and fair dealings
20 standards that are statutory in many states as the
21 insured for all of their asbestos insured manufacturers
22 or product suppliers, including Garlock and Manville.
23 And that settlement was a little over \$500 million.

24 Now we've run into a question of whether or not
25 that settlement's final, and we're in the Second Circuit

Direct - Rice

1 for the third time after being in the Supreme Court once.
2 So they haven't paid the 500 million yet. We've got a
3 settlement agreement, but they're just arguing they
4 didn't get -- the injunction they got wasn't as broad as
5 they were supposed to. So they're challenging whether or
6 not they're liable to pay it.

7 Q. They wanted it to sweep even more broadly?

8 A. They wanted it to sweep more broader. They wanted
9 it to be an injunction against other insurance companies
10 for other insureds that didn't get notice of the Manville
11 bankruptcy back in the 1985-86 range when Manville came
12 out of bankruptcy the first time. Although the original
13 injunction didn't give them that protection, they're
14 asking for it now and the insurance industry objected to
15 that. So it's insurer against insurer.

16 Q. So if you limited your search of your database to
17 people who specifically worked with Armstrong product,
18 would that delineate the scope of the population among
19 your clients and who you would regard as entitled to vote
20 in the Armstrong bankruptcy?

21 A. No, it would not.

22 Q. I see reference up there to servicing, maintaining
23 repairing, installing. Are those the kinds of -- are
24 those kinds of conduct ones for which there were in fact
25 significant numbers of claims assertable against

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1 Armstrong?

2 A. Absolutely.

3 Q. How so?

4 A. Well Armstrong sold a product, but Armstrong also
5 had insulation groups or contract units. They would go
6 into a job site and they may be hired to come in and put
7 new insulation or to cover the steam pipes. And in doing
8 so, they may or may not have used Armstrong products but
9 they still, under the law, were responsible to do their
10 job in a non-negligent fashion to give fair warning and
11 subject to putting a product in the stream of commerce
12 that may be subject to a strict liability claim or breach
13 of warranty claim.

14 So they would be responsible. Even if that was
15 Johns-Manville's pipe covering they were using, if they
16 applied it or removed it, or if they went in to repair
17 the pipes and Kaylo was on the pipes previously and they
18 stripped it off without fairly protecting the workers
19 that were in the plant, they would have legal
20 responsibility for that removal if it's Johns-Manville or
21 Kaylo or whatever they were removing. If they put
22 Armstrong back on it, they have responsibility for that
23 as well.

24 This litigation is massive in the different ways
25 that a person can get exposed, the different ways that a

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1 defendant can become liable. And depending on whether
2 you were a member of an association like the Asbestos
3 Textile Institute where we claim that everybody in the
4 asbestos textile institution conspired to, you know,
5 withhold information from the scientists in the medical
6 literature and manipulated the medical literature back in
7 the '40s and '50s and hid the dangers of asbestos. We
8 allege the defendants fabricated the state of the art
9 defense, which is what Travelers paid on, in violation of
10 the obligation of good faith dealing in the consumer
11 fraud statutes. There's different theories.

12 Q. Let's turn to Garlock's plan. Have you had an
13 opportunity to read the plan and the associated claims
14 management -- I'm sorry, Case Management Order and claims
15 resolution procedures?

16 A. I read them when they first came out and I've
17 reread them recently.

18 Q. Have you formed a view, sir, as to whether the
19 resolution procedures -- I'm sorry, whether that plan is
20 one that the constituency represented by the Asbestos
21 Claimants Committee would be likely to accept
22 voluntarily?

23 A. I would not anticipate very many, if any, asbestos
24 plaintiff's attorneys recommending approval of this plan
25 to their constituency or to their co-counsel, and I would

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1 not recommend it to any of my co-counsel.

2 Q. Give us, first, a general explanation for that
3 view and then we'll follow up with the particulars.

4 A. Well, you've got to first start by understanding
5 that these law firms have dedicated many of these law
6 firms, like my firm, Mr. Kazan's firm, Baron & Budd,
7 Weitz Luxenberg, 20-plus years to this litigation. We
8 also do other types of litigation and we believe in the
9 tort system, and we believe in the trial by jury, and we
10 believe in the constitutional right to trial by jury. So
11 when we approach evaluating a bankruptcy process, the
12 first thing we want to do is preserve those
13 constitutional rights and preserve that system because
14 that's the system that our country works with and it's
15 the best system in the world.

16 So when I first read this plan, I think this plan
17 destroys the tort system and the applicable law, and on
18 that alone I would not support this plan. So basically,
19 what this plan and its Case Management Order and its
20 resolution procedures is, and in my words, is the wish
21 list of defense lawyers and asbestos manufacturing
22 companies of everything they wish that Congress and the
23 state legislatures had given them when they tried over
24 the years, because that's what it is.

25 It's basically creating a federal mandated

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1 alteration of underlying state law without any use of
2 trial by jury, without any protections of rules of
3 evidence, rules of procedure, discovery, and removing the
4 Article III judge process and the juries from the system
5 and turning a Special Master into the fact finder of all
6 issues.

7 Q. Well now let's drill down a little bit into that.
8 In the states where you practice, is the general rule
9 with respect to joint tortfeasors one of joint and
10 several liability?

11 A. Predominantly, my states over the years have been
12 joint and several. Some have gone to the 50 percent rule
13 in more recent years. I think if you're talking about
14 numbers of jurisdictions, joint and several liability, I
15 think, still predominates in the volume of jurisdictions
16 that follow that rule.

17 Q. Defendants typically are unhappy with that
18 approach?

19 A. Sure.

20 Q. And what, as you read it --

21 A. Not just in asbestos litigation.

22 Q. As you read it, what would the combination of this
23 plan Claims Resolution Procedures and Case Management
24 Order do to that regime?

25 A. It completely destroys joint and several liability

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1 and imposes a comparative fault standard without any
2 quantification.

3 Q. As you read it, how's it do that?

4 A. Because it says you look at the exposures, and
5 it's limited to hands-on product exposure. And it's
6 limited to hands-on product exposure to GST or Garlock,
7 and it doesn't address the four or five companies that
8 Garlock absorbed over the years that had asbestos-
9 containing products that might have been sold under
10 different names, be it Belmont or some of the others that
11 they contained.

12 But beyond that, it does not -- it says we're
13 going to look at Garlock and we're going to compare it to
14 everything else whether we got evidence of it or not or
15 whether that evidence is admissible or whether anybody's
16 going to recover. But it creates a comparative situation
17 and it does it in a vacuum.

18 Q. What do you mean by that?

19 A. Well there's no discovery. It sets up a -- I
20 think it's six months after -- forget about the fact that
21 we're only dealing with a small fraction of the pending
22 cases that are ever acknowledged as being legally viable.
23 But as to those cases, the pleural Mesotheliomas, it says
24 within six months you give us everything that you can
25 that gets you past a directed verdict, summary judgment

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1 standard, without any discovery whatsoever. And by the
2 way, your plaintiff has to certify what's going to happen
3 today and in the future.

4 You've got to certify, as the lawyer for whatever
5 you're going to learn in the future, you know it now.
6 You never can do that. If I had to certify what I'm
7 going to know about the Pittsburgh Corning bankruptcy and
8 their exposures, I know there are going to be 25 or 30
9 percent of my clients are going to get sites that I don't
10 know about today, but this would require me to certify
11 that that's never going to happen, and I wouldn't do
12 that.

13 Q. Would you advise the client to do that?

14 A. No.

15 Q. Is that requirement in the procedures consistent
16 with the reality of the way in which cases are built?

17 A. No. It's a total wish list that you stop time and
18 you don't play by any evidentiary rules or you don't
19 allow any discovery or the exchange of information that
20 our system is built on.

21 Q. Is there any defendant in the tort system that, to
22 your knowledge, refuses to settle cases unless the same
23 claim has been completed with respect to all other
24 potentially responsible sources?

25 A. I have had -- I've not had that experience with

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1 anybody.

2 Q. Do you read this plan as attempting to create that
3 situation for Garlock?

4 A. It creates it. And it creates it in a
5 hypothetical sense in that it makes you certify what
6 might happen in the future and be stuck with it today.
7 And then they get a credit for what might happen in the
8 future that you might get from a bankruptcy is what you
9 -- because it says what you expect to get. Well I expect
10 when I file a bankruptcy claim to be paid, but that's not
11 happening. I've got quite a few that the trust doesn't
12 accept.

13 So while I may expect that a pleural Mesothelioma
14 client will get paid by these six trusts, these trusts
15 are -- they have -- these trusts can only pay out so much
16 money a year because they're designed to last for 20, 30,
17 40 years. So they have caps on their annual payment.
18 None of these trusts, after the initial, maybe the year
19 they come out, is up-to-date. And right now some of
20 these trusts are running year or two years, three years
21 behind before they can even look at a case. So I'll not
22 know whether a case is going to be accepted or not for a
23 while. It depends on when the cap is, when they hit the
24 cap.

25 Q. You appreciate that under the approach taken in

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1 the plan, claimants, Mesothelioma claimants, would be
2 offered two options of a settlement option and a
3 litigation option?

4 A. The language suggests there's two options, but the
5 reality is there's no option. Because the standards that
6 are being set to get through the case management process,
7 which is required to get to the litigation option, are
8 going to be impossible to meet. So they're basically
9 forcing everybody to \$1,000 and go away and leave me
10 alone.

11 Q. Explain that further. What's impossible by the
12 Case Management Order?

13 A. You just -- at any given point in time you're not
14 going to be able to meet all of these wish lists of
15 requirements, and you would never have had to meet them
16 in the tort system. So it changes -- it uses the words
17 applicable law and fair and efficient, etcetera, but
18 that's not what it does. It's a very one-sided, limiting
19 process that they're trying to force everybody through.
20 And if you don't want to play by those rules, take your
21 \$1,000, they call it a convenience group or something,
22 and go away and we'll be nice to you. And nobody's going
23 to support that. You know, that's just not going to be
24 acceptable.

25 Q. Did you have a look at the information demands

Direct - Rice

1 that would be imposed on claimants pursuant to the
2 settlement option?

3 A. Yeah, I looked at their claims resolution
4 procedures.

5 Q. And how did those information demands compare to
6 those that you faced when attempting to settle a case in
7 the tort system?

8 A. They're substantially more onerous than the tort
9 system requires and that Garlock required at the time we
10 did settlements over the years.

11 Q. Now, supposing you're representing --

12 A. And I got to certify to it.

13 Q. Certify to?

14 A. The attorney has to certify that these are
15 complete and accurate and it's everything he knows.

16 Q. Is that consistent with your understanding of the
17 way discovery works in the tort system?

18 A. No.

19 Q. Now, supposing you would -- you're advising a
20 client and you reject settlement offer -- settlement
21 option -- I'm sorry. Before we get to there. Did you
22 have a look at the scheduled values that are implicit in
23 the settlement option?

24 A. I have read this thing several times as it deals
25 with the alleged settlement values and the cap, and then

Direct - Rice

1 I've tried to read it with their state allocation that
2 they've now created which they have determined that
3 certain states get certain multiples and certain
4 reduction factors. And then they overlay that some 30
5 pages of occupational factors that they've created
6 without any, you know, understanding, at least that I
7 have. So I'm not really sure what you get. I could not
8 tell you what a claimant would get under this process.
9 But they've offered to, sometime in the future, put out a
10 claims calculator that would let us know that, but I
11 don't think that we would rely on that as being something
12 we would support.

13 I don't have any idea where the state allocation
14 process and this occupational allocation process comes
15 from, and I don't support the allocations. You know,
16 most of the joint and several states are given the lowest
17 benefit here, are given the highest reduction factor,
18 whichever way you want to look at it. So if I'm in a
19 jurisdiction in a state that's got joint and several law,
20 they've taken the joint and several, which is the better
21 chance of them having to pay more money, and made that
22 the lowest place they have to pay.

23 Q. So let's suppose that you reject the settlement
24 option on behalf of a client and you proceed to the
25 litigation option and you are presented with a

Direct - Rice

1 requirement of filing a proof of claim and questionnaire
2 in the space of 30 days or so. And then there follows,
3 once all these claims are gathered together, some kind of
4 consolidated summary judgment process without discovery
5 having yet been undertaken. Is that -- how does that
6 affect the plaintiff?

7 A. It is unrealistic that people are going to
8 voluntarily agree to that process, and it's not anything
9 close to what happens in the tort system that we're
10 supposed to be dealing with, or the application
11 applicable by law. But even more fundamental, the
12 federal MDL 875 was formed in the '80s, and I can give
13 you the exact date if you need it. But it's been there
14 for almost 25, 30 years.

15 Where the federal courts have worked to get the
16 asbestos cases out of the federal courts and to create an
17 efficient process. This process, as I understand it
18 correctly, would bring the national federal asbestos
19 volume of cases now and in the future to this courthouse
20 and place the burden on this courthouse to be the finder
21 of fact and the conclusion of law for every factual
22 dispute that's been decided in the -- normally decided by
23 juries in the tort system before any case can move. The
24 overwhelming burden on the litigants, the claimants from
25 California, Rhode Island, or wherever they are to have to

Direct - Rice

1 do all that in one courthouse, and not to mention the
2 burden on the court of having to do that, is impractical
3 to think that could work.

4 And then once it gets through whatever, whether it
5 be a Special Master or maybe it's supposed to be done by
6 the bankruptcy court. When it gets through all this
7 preliminary, it all goes to the Western District of North
8 Carolina District Court. And, respectfully, I think
9 there's an Article III and a jurisdiction issue affected
10 here, but that's legal. And then that court now acts as,
11 I guess, an MDL and sends them out all over the country
12 and I don't know what supervisory process that court
13 keeps, if it keeps any.

14 But in the MDL 875 process, one of the things that
15 the current defendants are complaining about is when the
16 MDL judge sends the case back to the home district is
17 that those district judges, as they are legally allowed
18 to do, decide things their own way, it's their courthouse
19 and their case management approach, and we're redoing a
20 lot of the stuff that are done in the MDL. And that's
21 when it was set up as a multi-district process. But
22 then, you know, new discovery is being done and new
23 experts and new witnesses are being put forth. So it
24 just doesn't work. And I just cannot imagine this would
25 ever work beyond all my problems with it just as a

Direct - Rice

1 practical matter.

2 Q. Does it appear to you to be calculated to magnify
3 the costs and burdens upwards of the plaintiff's side to
4 these disputes?

5 A. It shifts the entire burden to the plaintiff.

6 Q. Now, can the claims resolution procedures --

7 A. And let me say, and I guess one of the things
8 that, when I read it the first time, made me just sort of
9 throw it in the corner is at the end of reading all this,
10 it's nice to know that GST [sic] is going to pick the
11 trustees and the fiduciaries for the asbestos claimants
12 because they get to pick the TAC and they get to pick the
13 trustees.

14 Q. Is that the norm in asbestos bankruptcies?

15 A. No. No.

16 Q. Focusing back on the settlement option for a
17 moment. The claims resolution procedures purport to
18 require in Section 5.3(f)(2) that the claimant disclosed
19 the amounts of all payments received or to be received
20 from the entity to whom the other claim was submitted,
21 and those are -- "entity" and "other claim" are defined
22 terms. In settling cases in the tort system, is it
23 customary for the plaintiff to disclose to the -- for the
24 plaintiff to disclose to the defendant settlement amounts
25 received from other sources?

Direct - Rice

1 A. No. Not until it's appropriate by applicable law,
2 which is generally after the time that a verdict has been
3 taken and rendered where the court then needs the
4 information for applying the applicable offset or
5 judgment rules. All of the settlements and day-to-day
6 financial dealings between a claimant and a defendant are
7 confidential, and they're confidential at the demand of
8 the defendants in most parts. Even today it's at the
9 demand of the defendants.

10 Q. Was that true in your dealings with Garlock? Did
11 Garlock insist upon confidentiality?

12 A. Yes.

13 Q. Mr. Rice, do you believe that there is any chance
14 that the asbestos claimants constituency would ever
15 voluntarily submit to this debtor's plan?

16 A. In my view, I would never advise any of my clients
17 or any of my co-counsel network or any counsel that asked
18 me to ever vote in favor of this plan.

19 Q. I pass the witness.

20 THE COURT: All right. Mr. Guy, do you have any
21 questions?

22 MR. GUY: No, sir.

23 THE COURT: Mr. Cassada.

24 **CROSS-EXAMINATION**

25 BY MR. CASSADA:

Direct - Rice

1 Q. Good afternoon, Mr. Rice.

2 A. Good afternoon.

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Cross - Rice

1 Q. We met before, including last December when I had
2 the occasion to take your deposition.

3 A. Yes. You came to Charleston and took my
4 deposition. I don't remember when it was.

5 Q. Okay. Thank you. I want to focus, first, on one
6 thing that you didn't talk about that much and that's
7 your relationship or your firm's relationship with
8 Garlock.

9 A. Okay.

10 Q. Because you did testify you've been an asbestos
11 lawyer for almost 32 years?

12 A. I tried my first case in '82.

13 Q. Okay. 31 years. And you've tried a lot of
14 asbestos claims.

15 A. That's correct.

16 Q. And you've negotiated a lot of settlements?

17 A. That's correct.

18 Q. I heard you talking about negotiating not only
19 very large asbestos settlements; you've negotiated the
20 Georgine settlement?

21 A. I did with Mr. Locks and Mr. Motley.

22 Q. Right. And the Combustion Engineering, the
23 pre-pack there?

24 A. Yes.

25 Q. Fibreboard settlement?

Cross - Rice

1 A. Mm-hmm. ("Yes.")

2 Q. Was it Congoleum? Were you involved in that one
3 as well?

4 A. Mr. Weitz and I did part of the Congoleum as
5 counsel for the pre-pack.

6 Q. So you've negotiated settlements large and small
7 in the asbestos context?

8 A. That's correct.

9 Q. And you negotiated the tobacco settlement?

10 A. That's correct. I mean, I had help. There were
11 other people involved.

12 Q. Sure. Sure. But you were -- you're famous for
13 that?

14 A. I appreciate that. I was lead negotiator for the
15 states, but I had great attorney general support and they
16 were at the table.

17 Q. Currently, you're negotiating on behalf of the
18 people who were injured by the BP oil spill?

19 A. It's an MDL. The court appointed a steering
20 committee and I am one of two lead negotiators on behalf
21 of the steering committee.

22 Q. Okay. Turning to Garlock. Prior to 2004, you
23 would describe your relationship with Garlock as being
24 good?

25 A. I think so.

Cross - Rice

1 Q. Okay. You negotiated settlements with Garlock?

2 A. I think my relationship with Garlock is good
3 today, so I don't want to put it into 2004. Mr. Magee's
4 promised me to golf at his club.

5 Q. We heard from Mr. McClain earlier about declaring
6 war against, I believe, it was Owens Corning. And you
7 talked about being in some wars of your own.

8 A. We've from time to time had defendants we've taken
9 harder lines with than we have Garlock, if that's the
10 point.

11 Q. Okay. And the word targeting, I think that's a
12 word that you've used, and I've heard that from other
13 witnesses in this litigation. Targeting is when a
14 plaintiff's firm decides it's going to focus its efforts
15 on a specific defendant?

16 A. I don't know everywhere you've heard it. But when
17 I use the term targeting, I'm talking about in that
18 particular situation that's who we are focusing on for
19 that particular case or type of case or period of time or
20 whatever it is.

21 Q. Okay. I thought I heard you say that when you're
22 targeting a company during litigation you don't really
23 care about anyone but the target. Did I understand that
24 correctly?

25 A. I don't think I said I don't care about anyone

Cross - Rice

1 else, but they're not as significant.

2 Q. Okay.

3 A. If I said I don't care about them, that wouldn't
4 be right. They're just not as significant.

5 Q. Okay.

6 A. When I'm going to play Texas A&M, I'm going to
7 worry about stopping "Johnny Football," but I'm not going
8 to forget about the running back.

9 Q. Okay. Fair enough. And so there did come a time,
10 didn't there, after what we've referred to as the
11 bankruptcy wave -- it doesn't seem that significant to
12 you today, but there did come a time after the bankruptcy
13 wave where you fell out of sorts with Garlock; right?

14 A. I fell out of sorts with Garlock probably in part
15 in the 1998 timeframe during one of the Mon Mass
16 situation when I learned about their testing of their
17 gaskets that they had never disclosed. That was the
18 first time I questioned my relationship with Garlock.

19 Q. I believe -- yeah, we talked about this in your
20 deposition. You were focusing in, I think, around 2004.
21 Does that sound right?

22 A. I don't remember what date I used in deposition.
23 But when I went back to my timeline which I had -- which
24 I have, and I looked at the documents, it was in 1998
25 when we learned of the Garlock gasket test that had never

Cross - Rice

1 been disclosed to us.

2 Q. Okay.

3 A. So that would be --

4 Q. But you also were upset because you thought that
5 Garlock had reneged on some kind of a deal?

6 A. Then I got upset with Garlock when we had -- as I
7 understood it, we had an agreement to pay certain cases.
8 And they decided in the deal, at the partial end of the
9 deal, they didn't want to complete it. I had not filed
10 the cases, and there was arguments about statute of
11 limitations. Yeah, we had some disputes.

12 Q. And that's when you decided you were going to
13 target Garlock?

14 A. That's when I decided that I was no longer going
15 to be, you know, settling with Garlock routinely. So we
16 started get, you know, approaching Garlock as a different
17 defendant.

18 Q. Right. But you did --

19 A. Garlock was one of my good friends in the railroad
20 industry early on because you funded my screening process
21 in part.

22 Q. But you did -- I mean, you did decide to target
23 Garlock, to be fair?

24 A. We did decide to change our approach to Garlock,
25 and Garlock became one of the defendants that we would

Cross - Rice

1 try to target and make a higher profile when the cases --
2 when it was applicable.

3 Q. And you built a liability case against Garlock.

4 A. Well we started putting more emphasis on it. But
5 you've been a member of the ATI for years and years. I
6 didn't go back and build it from scratch.

7 Q. You didn't build it from scratch but you built it.
8 You built a good case against Garlock.

9 A. We built a case against Garlock, but we had better
10 cases against others, and it depends on the facts and the
11 circumstances. I've never been one that's been
12 successful in getting, you know, millions of dollars on
13 Garlock on individual cases. If that's the point you're
14 making, I agree with that.

15 Q. But you built the case and you unleashed your
16 trial lawyers on Garlock?

17 A. In some cases where it was the right situation, we
18 tried to build a more higher profile situation with
19 Garlock. We had better success in some places than
20 others.

21 Q. I'm sorry. It seems like a little bit more
22 limited than I recall when we were talking about it.

23 A. You'll have to show me what you recall. I can't
24 tell you what you recall.

25 Q. All right.

Cross - Rice

1 (Video begins playing at 3:07 p.m.)

2 (Video stops playing at 3:10 p.m.)

3 BY MR. CASSADA:

4 Q. Does that refresh your recollection?

5 A. It does -- I remember that, but I don't relate it
6 to your question.

7 Q. Yeah. My question was, there came a day when you
8 changed your approach and you started targeting Garlock
9 and you built the liability case and you had your 25
10 lawyers around the country.

11 A. What we discussed, what you just showed, is
12 correct.

13 Q. Okay. All right. So again, it's 2004. You've
14 got Georgine --

15 A. Excuse me. I apologize. The date's wrong. It's
16 1998 is when the testimony was taken in the Mon Mass case
17 about the Garlock gasket testing that had not been done
18 before. So that date reference is wrong.

19 Q. What about --

20 A. I also -- at that period of time I had ongoing
21 settlement agreements that were X dollars for volume of
22 cases that I had the responsibility to continue to
23 process. Sometime in this timeframe things changed. But
24 the date of when we learned of the gasket test was in the
25 '98 timeframe versus the 2000 timeframe.

Cross - Rice

1 Q. But what about the date when you built the case
2 against Garlock?

3 A. Garlock -- you know, once we learned about the
4 testimony that was available from Garlock about the dust
5 levels from their own product test, which they never had
6 done when they were selling the product, we knew that we
7 had the ability to put on some additional evidence. So
8 we started putting stuff on our exhibit list and putting
9 ourselves in a situation of trying a case if we decided
10 to try the case. So if that's what you mean by
11 targeting, that's what I mean.

12 We started disclosing the witnesses so they were
13 usable at trial and had the exhibits, added the ATI, the
14 rest of the ATI. If Garlock was a party, we would use
15 the ATI exhibit list which we may not have used if it
16 wasn't a defendant. So, stuff like that.

17 Q. I looked at the history of trials between your
18 firm and Garlock, and I wanted to ask you about a couple
19 of those which came after you testified that you built
20 the case against Garlock. I'm not going to go -- I'm not
21 going to focus on any of the cases Garlock won. I'm
22 going to focus on two of them, the only two that I could
23 find -- at least the only two Mesothelioma verdicts that
24 your firm had obtained against Garlock. One of them was
25 in 2004 in Texas. Do you recall -- and I believe, Your

Cross - Rice

1 Honor, I can speak -- these are public trials and they
2 are publicly reported. I don't plan to get into anything
3 confidential.

4 But you recall that your firm tried a case against
5 Garlock in Linden, Texas in 2004 for a gentleman by the
6 name of Manfred Schiller?

7 A. No.

8 Q. You don't recall that?

9 A. No.

10 Q. Let me see if I can refresh your recollection.

11 A. Where in Texas?

12 Q. Linden, Texas?

13 A. Where is Linden, Texas?

14 Q. Good question. Your trial lawyer John Herrick. I
15 believe I saw his name.

16 A. John Herrick's one of my attorneys. Yes.

17 Q. He's one of your best attorneys.

18 A. I'll reserve my opinions for that when it's
19 relevant. He's certainly one of my attorneys. He's a
20 member of the firm. I'm not going to start getting
21 pinned as to which one of my attorneys are better than
22 others. They may read it and may cost me a lot of money.

23 Q. Well, in any event, this was a case where Garlock
24 was targeted.

25 A. If you tell me that.

Cross - Rice

1 Q. Okay. Let me show you something.

2 A. When was this?

3 Q. It was October of 2004.

4 A. So Celotex, Eagle -- you took it away from me. I
5 didn't see anybody that went bankrupt up there but
6 Garlock.

7 Q. I'm sorry?

8 A. Everybody on that list, I think, was in bankruptcy
9 by that time. Can you put that back up.

10 Q. Yeah, I will. I'm going to get back to it in a
11 moment.

12 A. Okay. Thanks.

13 Q. This is a case that -- I believe Mr. Schiller was
14 a metal worker. And this -- this was a case where you
15 had built a case and your firm had, and you brought the
16 A-team to Texas to try the case against Garlock. Do you
17 see that?

18 A. Can you put that on this screen up here so I can
19 see it?

20 Q. I think it's on the screen.

21 A. No, it's not.

22 THE COURT: His isn't on.

23 BY MR. CASSADA:

24 Q. Oh. Can we turn his on?

25 A. Okay. Thank you.

Cross - Rice

1 Q. So you see Mr. Herrick was there trying his case
2 with a Nix, Patterson and Roach firm. You called the
3 following experts that says -- and these are experts, by
4 the way, that our court has met. Mr. Brody. Dr. Lemen,
5 we didn't meet him here but we heard a lot about him.
6 Mr. Longo, and Dr. Hammar. This is the A-team of
7 plaintiff's experts; right?

8 A. I'm not going to espouse opinions of who the
9 A-team or B-team is about the experts anymore than I am
10 about my lawyers. These are experts that have been used
11 and that have been qualified by the courts to give
12 opinions throughout the country.

13 Q. And you know Mr. Longo would have showed his
14 video here; right?

15 A. I haven't been following the trial that closely.
16 So if you say that, I'll accept it.

17 Q. Are you familiar with his gasket study and his
18 video?

19 A. I am familiar with it.

20 Q. There has been testimony about how powerful that
21 is. In any event, at the end of the day, Mr. Herrick
22 obtained a verdict of about \$1.3 million. And it reports
23 here that, and we'll look at that verdict form, 13
24 percent assigned to Garlock. But after settlements and
25 application of statutory damage caps and allocations,

Cross - Rice

1 Garlock was obligated to pay \$37,000. And I, myself,
2 looked in the database, and I'm informed that that case
3 eventually settled for \$92,000 or so dollars.

4 A. I have no personal knowledge of it. I'll accept
5 that if you tell me that.

6 Q. Okay.

7 A. Why did you pay 92 if you only owed 37?

8 Q. Well, sometimes cases settle during appeal for
9 more money. I don't know exactly why, but that's the way
10 it happens; right? I mean, sometimes --

11 A. Tell me why a defendant does that and I'll try to
12 remember it the next time I'm trying to settle a case.

13 Q. So we were talking about the allocations here. So
14 you point out that these were -- these were bankrupt
15 companies except for Garlock; right?

16 A. Well, 2004; right?

17 Q. Yes.

18 A. Celotex, Carey, Eagle, Johns-Manville were all
19 bankrupt.

20 Q. Okay.

21 A. I assume Manfred Schiller is the plaintiff. And
22 I've got no idea who Guard-Line is.

23 Q. In any event, Eagle-Picher, Celotex,
24 Johns-Manville. They're thermal insulation
25 manufacturers?

Cross - Rice

1 A. They're who?

2 Q. They're thermal insulation manufacturers.

3 A. Who?

4 Q. Those three companies.

5 A. No.

6 Q. They produce thermal insulation, Amphibole
7 insulation products, didn't they?

8 A. Celotex made floor tiles. They made -- Carey,
9 Canada was a mining company. Celotex made pipe covering
10 and block as well. Eagle-Picher had multiple kinds of
11 conducts. Johns-Manville's products list is probably 200
12 products of all types.

13 Q. All of them made pipe coverings and other
14 insulation products?

15 A. I don't think Carey, Canada made any pipe covering
16 at call.

17 Q. Are you knowledgeable with respect to their full
18 range of products?

19 A. Yeah. Carey, Canada was a mine. It mined
20 asbestos and sold raw fiber. And it sold asbestos cement
21 85 Mag cement. Carey, Canada never itself, to the best
22 of my recollection.

23 Q. 85 percent Mag cement?

24 A. 85 percent Mag cement, magnesium cement.

25 Q. In any event, did you know whether Mr. Schiller

Cross - Rice

1 had filed trust claims against those three companies?

2 A. I had no idea.

3 Q. So you don't know whether those trust claims
4 became available to Garlock during the case?

5 A. I have no idea. But something was available to
6 the jury to allocate 87 percent of the fault to parties n
7 not in the courtroom.

8 Q. That happens, doesn't it?

9 A. Sometimes you get lucky.

10 Q. For Garlock it seemed to happen all the way -- all
11 the time for them when they had access to the evidence.
12 We've seen that.

13 A. I don't think that's true at all.

14 Q. Oh, you don't? Okay. Well it happened in this
15 particular case.

16 A. Apparently it happened, and you've reduced it to
17 \$37,000 and paid three times that.

18 Q. Yeah. And this was in 2004. And at this point
19 all of those defendants that we looked at on that
20 impressive-looking wave slide that you were looking at
21 earlier, they were in bankruptcy so we don't see any of
22 them up here.

23 A. The only -- I assume the only reason you don't see
24 the other companies is because you weren't -- no one was
25 able to put on any evidence of exposure because all these

Cross - Rice

1 companies were in bankruptcy, too, and you see those. So
2 if there had been evidence of Owens Corning or H.K.
3 Porter or whoever else was in bankruptcy, I would have
4 assumed it was on the verdict form. But I wasn't in the
5 case and I've got no personal knowledge. I've never read
6 it. I'm only answering your question.

7 Q. If there had been that evidence, Garlock's 13
8 percent share could have been lower; right?

9 A. Or higher.

10 Q. So more evidence and a higher share.

11 A. Yeah. Because if you started to put on evidence
12 about how bad Flintkote was, it might have backfired on
13 you. If you started to put on evidence about how bad
14 Federal-Mogul's gas was, it might have backfired on you.
15 So your lawyer chose what evidence he put on.

16 Q. Fair enough. But if we had evidence of exposure
17 to pipe insulation and other highly friable Amphibole
18 insulation products, that would have inured to Garlock's
19 benefit.

20 A. I can't make that assumption because I don't know
21 anything about the facts. I don't know what Garlock
22 products were identified, whether it was crocidolite
23 products or whether it was Chrysotile products. I've got
24 no idea what the facts are.

25 Q. All right. But in any event, from time to time,

Cross - Rice

1 defendants are successful in getting companies that are
2 in bankruptcy on the verdict form and assigning shares to
3 them.

4 A. Our system -- our tort system works, if that's the
5 question.

6 Q. Okay. Your Honor, I've marked the article, the
7 news article from Harris Martin Publishing, on the
8 Schiller case as GST Exhibit 7193, and the verdict form
9 is GST-7194. I move to admit those.

10 THE COURT: All right. They're admitted.

11 BY MR. CASSADA:

12 Q. Okay. Now the other case I found that was tried
13 to verdict is a case also tried by Mr. Herrick. This
14 one was in Dallas, Texas for a gentleman by the name --
15 the plaintiff was Sidney Tanner and his wife. Does that
16 case ring a bell?

17 A. The name Tanner rings a bell ,but not specifically
18 related to this case.

19 Q. Okay. Mr. Tanner was actually a gasket cutter.

20 A. This is a very strange mix of parties on the
21 verdict form --

22 Q. Yes.

23 A. -- because it looks like everybody on that verdict
24 form is a gasket manufacturer or supplier, and only two
25 -- except for Manville. Manville had multiple products.

Cross - Rice

1 But it's interesting that only two of the gasket people
2 were found to be liable. And John Crane and A.W.
3 Chesterton are competitors of Garlock, and they weren't
4 found to be liable. It's just an interesting verdict
5 form.

6 Q. Yes. And we do have a -- we've got a story about
7 this case, too, also compliments of Harris Martin
8 Publishing.

9 A. Okay.

10 Q. In this case the jury awarded \$260,000 to Mr.
11 Tanner and assigned four percent fault to Garlock.

12 A. This was only a gasket case, is that what you're
13 representing?

14 Q. Well the report here is that Mr. Tanner was a
15 gasket cutter.

16 A. Exposure to asbestos containing gaskets. So that
17 was what was tried?

18 Q. Right.

19 A. Okay.

20 Q. That's what the report is, although he did have --
21 he had exposure to Johns-Manville products.

22 A. Where is that in here?

23 Q. Well, it says here that the jury also found
24 Johns-Manville, which is joined in the third -- the third
25 party in the proceedings, 74 percent responsible also

Cross - Rice

1 under marketing defect.

2 A. Right. But they sold gaskets.

3 Q. Well, maybe they were -- maybe he was exposed to
4 Johns-Manville gaskets.

5 A. Okay. I'll accept that.

6 Q. The story is incomplete in that regard. Here,
7 again, we have experts for the plaintiff who have been
8 identified in this court as being very capable experts.
9 We have Dr. Hammar again, Dr. Lemen, and James Millette
10 was in this case instead of Longo. He's another highly
11 regarded industrial hygienist expert for the plaintiffs?

12 A. Yes. But this list of experts makes me believe
13 that the diagnosis was disputed.

14 Q. So you're suggesting maybe this plaintiff didn't
15 have good evidence that he actually had Mesothelioma?

16 A. Well he apparently had good enough evidence for
17 the jury to award him \$260,000, but the fact that you've
18 got Hammar, who is a pathologist, who would only be
19 testifying on a diagnostic issue, and Feingold
20 testifying, makes me believe that the issue of diagnosis
21 was part of the dispute, which might explain the
22 compromised verdict or the verdict amount.

23 Q. Okay. In any event, in this case Garlock was
24 awarded four percent -- allocated four percent of the
25 liability?

Cross - Rice

1 A. That's what these documents show. I don't know if
2 they're accurate or not but I accept them.

3 Q. Manville was another company that wasn't in the
4 courtroom. It was outside of the courtroom, obviously?

5 A. Yes, sir.

6 Q. These are the only two cases I can find where
7 during this built up phase your firm actually obtained a
8 verdict against Garlock. But in both of them, liability
9 was assigned to companies that were not actually in the
10 courtroom but who had filed for bankruptcy.

11 A. Which is not at all unusual.

12 Q. It's not unusual.

13 A. No. I mean, defendants have the right, and you've
14 done it for years. You have the right to choose to put
15 on co-defendants if you choose to do so.

16 Q. The fact is the case against Garlock, that is
17 trying a case against Garlock, is not really easy, is it?

18 A. I don't think trying a case against anybody's
19 easy.

20 Q. Well we heard talk about how easy the case was
21 against Owens Corning. I think Mr. McClain was called in
22 and he talked about his experience on that. And I think
23 you had spoken similarly during your direct testimony
24 that when you had an insulation company like that that
25 emitted such high levels of fibers, it was an easy case.

Cross - Rice

1 That was the target.

2 A. I think what we were talking about was the
3 historical evidence from the company's documents make it
4 easier.

5 Q. Okay.

6 A. But, no. Trying a case is not easy, no matter
7 what case it is.

8 Q. But it's particularly true against Garlock; right?

9 A. I don't think so.

10 Q. I mean Garlock -- Owens Corning?

11 A. Every case presents different issues, Mr. Cassada.
12 But if I've got a very presentable 65, 70 year-old
13 claimant, you know, everything's different. So different
14 things have to be done in a trial. If I've got a good
15 plaintiff with good exposure testimony, trying a case
16 against Garlock's not any harder than trying a case
17 against, you know, Turner and Newall would be or anybody
18 else. I've got to deal with the same issues. I've got
19 to deal with exposure. I've got to deal with causation.
20 I've got to deal with science. You know, Manville
21 disputed their products were capable of causing disease
22 when we were trying cases against Manville. So I've had
23 to deal with the same Chrysotile issues and exposure
24 issues and low-dose, high dose, encapsulation for 30
25 years.

Cross - Rice

1 Q. Right. By the way, we were talking about these
2 two cases. I note that these articles also identified
3 the experts that Garlock called, and these names are
4 familiar too. These are experts who I bet our client
5 would call these A-listers. You understand, don't you,
6 that it was very expensive for Garlock to win a case --
7 to put on a case and properly defend it.

8 A. I am perfectly aware from taking depositions of
9 your experts that they're well paid and you spend a lot
10 of money for them. Right.

11 Q. And the lawyers are well paid too; right?

12 A. I'll let you answer that.

13 Q. Okay. Okay. You've heard, probably, that there's
14 been evidence in this case that Garlock's defense costs
15 went up tremendously on a per case basis in defending a
16 case from the 1990s versus the 2000s.

17 A. I have heard that, yes. It doesn't surprise me at
18 all. And you know, your defense cost in the Grace
19 bankruptcy was probably astronomical, but it doesn't mean
20 it was proper to spend it considering the court said you
21 had no standing. I mean you choose how you spend your
22 money. You choose what witnesses you bring, how many you
23 bring, how much you pay them. You can control that cost.

24 Q. Well when it comes to being actually a defendant
25 in an asbestos trial, your choice is either to defend

Cross - Rice

1 yourself or to knuckle under to whatever the plaintiff's
2 lawyer is demanding be paid?

3 A. Well, no. Your choice is to defend yourself the
4 way you decide to defend yourself. But you can send one
5 lawyer to a deposition or you can send three lawyers to a
6 deposition. You can take depositions by telephone or you
7 can insist on flying across the country and taking
8 everybody live. I mean, you control how you want to
9 spend the cost.

10 Today you've got video conferencing and you can
11 take depositions by video. You don't have to fly to San
12 Francisco or Washington to see Hammar. Longo has been
13 deposed X hundreds of times. You don't have to depose
14 him in every case. If you choose to do so, you're going
15 to have a more expensive defense.

16 Q. Okay. You don't dispute Garlock's position that
17 it settled cases in large part to avoid having to pay the
18 cost of defending itself.

19 A. I think Garlock, like anybody, weighs all of the
20 risk factors of a trial. I'm assuming that cost is part
21 of it, but I don't think it was solely because of defense
22 costs. I mean, I've spent a lot of time with Tim
23 O'Reilly over the years. Tim was a very nice gentleman.
24 I've talked to him while he was working with Garlock and
25 after he worked with Garlock, and while he was fighting

Cross - Rice

1 ferret legislation. He and I have been on panels
2 together. So my impression from my interaction with the
3 Garlock people is there are multiple reasons they settled
4 cases.

5 Q. Certainly, defense costs are important; right?

6 A. I am sure defense cost was a factor.

7 Q. In the Schiller case or the Tanner case, you can
8 imagine. I mean in the Tanner case, Garlock's share was
9 \$10,500. You don't doubt that Garlock spent many times
10 that amount to defend itself.

11 A. If you say they did. I don't doubt it. I have no
12 knowledge of that.

13 Q. Your Honor while I'm thinking about it, the report
14 on the Tanner case has been marked as GST-7193 and the
15 verdict form in Tanner is GST-7184. I move to admit both
16 of those.

17 A. But on that point -- I mean, you chose to bring
18 Feingold. You chose to challenge the diagnosis. I don't
19 know why you did that, but that was your decision and you
20 had the right.

21 THE COURT: Those are the same numbers you gave me
22 for Schiller.

23 MR. CASSADA: Are they really? What are the --

24 THE COURT: What are the numbers for Schiller?

25 MR. CASSADA: I may have just re-read the Schiller

Cross - Rice

1 numbers.

2 Yeah. The Schiller -- the Harris Martin article
3 is GST-7191.

4 THE COURT: All right.

5 MR. CASSADA: And the verdict sheet is GST-7192.

6 THE COURT: Okay.

7 MR. CASSADA: I may have given you those numbers
8 inadvertently previously. For Tanner it's GST-7193, and
9 the verdict sheet for Tanner is 7194.

10 THE COURT: All right.

11 BY MR. CASSADA:

12 Q. You were -- your firm also tried a case against
13 Garlock in Virginia, and you were talking about the
14 various consolidated trials that your firm worked on
15 against defendants. Are you familiar with a case in
16 Virginia where there was something over a thousand
17 consolidated cases tried at once in Newport News against
18 Garlock and other defendants?

19 A. Shipyard cases with Pete Nichol?

20 Q. Yes.

21 A. I didn't know -- I don't remember them ever going
22 to trial. Did they go to trial? I remember the cases
23 and that there was a bunch of cases from Maryland that
24 got refiled in Virginia, but I don't remember -- I don't
25 remember what happened to them.

Cross - Rice

1 Q. Those were cases -- let me see if I can refresh
2 your recollection on those. Those were cases filed on a
3 consolidated basis. I believe there were four
4 Mesothelioma claims and hundreds, maybe over 1,000, of
5 the claims of other disease types.

6 A. I don't recall, so I don't know.

7 Q. The court -- yeah. In that case, after the trial
8 Garlock was found not to be liable.

9 A. I have no knowledge.

10 Q. Okay. Let me ask you -- I've looked back through
11 the debtor's database at the settlement amounts that were
12 negotiated through your law firm for the Mesothelioma
13 cases during various points in time. I notice during the
14 1990s, you will see the average payment was \$3,418. Of
15 course, there was one fairly big payment in there, or
16 maybe more than one. But the median payment was \$3,500.
17 And then in the early 2000s, after the bankruptcies, you
18 will see it went up a little bit to \$4,773. Same median
19 but a little bit larger?

20 A. Is this just mesos?

21 Q. These are just Mesothelioma claims. Exactly.

22 A. Okay.

23 Q. And then finally during -- I tried to focus on the
24 2006 to 2010 era, and the reason I did this was twofold.
25 One, it was a time period after you had testified that

Cross - Rice

1 your firm built a liability case against Garlock and was
2 taking a harder line with Garlock. It was also matches
3 up with the time period that your expert in this case has
4 identified as the calibration period under the estimation
5 opinion that Dr. Peterson has delivered in the case.

6 You'll notice here that there was an increase in
7 the average amount by multiples of the average payment
8 during the prior time period, but the median payment
9 remained the same. And there were some large payments in
10 the group. But you can see that the average payment was
11 \$17,602, and that's that time period before the
12 bankruptcy petition was filed in June of 2010?

13 A. What's the question?

14 Q. Okay. Just focus on this. Does this comport with
15 your understanding of your settlement situation with
16 Garlock?

17 A. No.

18 Q. Okay. Well this is the data, the data that we
19 have, that shows what the settlement results were.

20 A. I settled some meso cases in the 2006 to 2010
21 timeframe for maximum amounts higher than \$135,000.

22 Q. Where did you settle those cases?

23 A. I believe West Virginia.

24 Q. In West Virginia? Okay.

25 A. What this looks like is a reflection of maybe our

Cross - Rice

1 railroad settlement agreements --

2 Q. Okay.

3 A. -- which would have been under the Ness Motley
4 name where you were paying in railroad cases when I had
5 the employer under the FELA as my defendant.

6 Q. Who was your West Virginia associated counsel?

7 A. We are working with Humphreys. We work with Scott
8 Segal and those. We work with Dean Hartley. We work --
9 those are the ones I think are principal now --

10 Q. Okay.

11 A. -- in this timeframe.

12 Q. Yeah. So this next slide incorporates those law
13 firms. And you will see that there are some --

14 A. I don't know how you're separating Ness Motley and
15 Motley Rice and associated firms. I'm sorry.

16 Q. We're putting them all together here.

17 A. Okay. Then I think the maximum at 250? I don't
18 remember whether -- that's closer to my recollection than
19 the 135.

20 Q. Okay. I wasn't sure how to treat those firms, so
21 I broke it out with a -- with the Motley Rice firm and
22 then separately added the West Virginia firms. So when
23 we add them, you do get a higher maximum payment there.
24 So it does seem -- there are occasionally higher value
25 claims that have paid more money; right?

Cross - Rice

1 A. Cases where you decided that you've got a case you
2 want to try from different defendants sometimes get
3 higher money from different defendants, depending on all
4 the circumstances.

5 Q. And then -- and the average is a little bit
6 higher, too, \$27,000 average payment during this time
7 period.

8 A. I don't know who all's in this. So I don't know
9 what -- I don't know what law firms you're trying to
10 focus on. Is Humphreys in here?

11 Q. I'm putting them all in here together.

12 A. But who are they?

13 Q. They're all your associated firms that we're aware
14 of, including the ones on the bottom of the list.

15 THE COURT: If he can't identify this, then I
16 don't think he can provide you with any evidence.

17 BY MR. CASSADA:

18 Q. Let me -- you've talked about having read the plan
19 and you gave your description of the plan here, and it
20 made me wonder whether you had -- you really read it very
21 carefully.

22 A. I have read it several times as carefully as I
23 possibly could. But I'll be glad to discuss it with you
24 if you want to bring something to my attention. Maybe I
25 misunderstood it.

Cross - Rice

1 Q. Yeah. When you talked about the jury trial rights
2 being taken away --

3 A. Right.

4 Q. -- and the total destruction of joint several and
5 all that. You seemed to be focusing on the settlement
6 provisions of the plan where the claimants would actually
7 be offered settlement amounts.

8 A. I don't think so.

9 Q. No? Well, there is an opt out to litigation.

10 A. There is an opt out to litigation after you have
11 decided the factual question of exposure, after you
12 decided the factual question of science, after you
13 decided the factual question of causation, and after you
14 decide the factual question of statute of limitations
15 which are generally all jury questions.

16 But under your case management process those all
17 get decided in the underlying Special Master or judge
18 before you go back to the jury. And my experiences are
19 all of those are generally fact-intensive disputed cases.
20 And everything you've done here -- as I understand, you
21 spent a couple days talking about the science. I think
22 that's factual dispute, and that's normally what the jury
23 decides. That's exactly what you just pointed out in
24 Schiller and Tanner is those witnesses testified to those
25 factual disputes, and that's what the jury decides. And

Cross - Rice

1 you win some and you lose some.

2 Q. Well let me -- let me assure you --

3 A. In this process, I don't get to do that.

4 Q. Let me assure you that under the plan, any
5 claimant who disputes liability and wants to go to a jury
6 would have any issue triable by a jury so tried.

7 A. Well Mr. Cassada, this plan says I don't get out
8 of your Case Management Order, out of your Special
9 Master, until I jump through all those hoops.

10 Q. I really doubt that you've read the plan
11 correctly.

12 A. Let's look at it.

13 Q. Are you familiar with -- did you read the
14 expedited review provisions?

15 A. Yes, I did. Let's --

16 Q. Did you know those provisions would pay a claimant
17 on average more than your clients receive on average?

18 A. No, sir. Because you say there's a payment
19 percentage, but you don't say what it is. And you only
20 fund the trust with about \$200 million in present value,
21 and that's not going to pay very many people much.

22 Q. Well if the plan pays your client -- your clients
23 in full, the settlements that you've been able to
24 negotiate during the last five years while you've built a
25 liability case up against Garlock, don't you think that

Cross - Rice

1 would be something that might be acceptable to your
2 client?

3 A. No way. Because you are taking a ant and trying
4 to make it into an elephant. There are some cases that
5 we settle for 250. I don't know if your data's correct
6 or not, but I'll accept for purposes of your question
7 that your data's correct. There's nothing under this
8 plan that gives me the ability to recover a guaranteed
9 \$250,000 from Garlock on the case that I decide is a
10 Garlock case that I should get that kind of money for.

11 This plan shifts everything out of our decision
12 making, just puts all the burden on us and puts it into
13 your decision making. There is in your case management
14 or claims resolutions, the --

15 Q. Yeah. I suggest it might be beneficial for you to
16 sit down with someone on our side and we can go over the
17 plan with you and actually discuss your concerns, because
18 it seems there are some serious --

19 A. I suggest to you if I've misread it, there are a
20 lot more lawyers out there who are going to misread it.
21 But I don't think I've misread it. Because if I remember
22 correctly, I've got six months to file my exposure
23 evidence, my science opinions, all of that, and then you
24 file a motion. And if you win that motion, we're dead.
25 Well those motions are all factual specific, and you want

Cross - Rice

1 those decided on a motion practice and not in front of
2 the jury. My understanding of our system is factual
3 disputes get resolved in front of juries.

4 Q. If your motions are factually specific, Mr. Rice,
5 I can assure you that your clients would not be denied a
6 right to a jury trial under that plan.

7 A. Do you agree that the science issues --

8 THE COURT: Why don't you all talk about this over
9 a beer sometime? I've got to come up with a number at
10 this point. We'll deal with the plan later if we get
11 that far.

12 MR. CASSADA: Thank you, Your Honor.

13 THE COURT: Let's focus on the number.

14 BY MR. CASSADA:

15 Q. Mr. Rice, you were talking about your
16 participation in the negotiation of the W.R. Grace
17 settlement. You talked about some of the reasons for
18 that settlement. Were you aware that there was a
19 confirmation hearing during which the plan proponents
20 actually put on witnesses who testified about the reasons
21 for that settlement?

22 A. Yes.

23 Q. And were you aware that the reasons cited in the
24 testimony were the concerns about whether, either Grace
25 -- Grace might actually win the estimation trial and get

Cross - Rice

1 a number that was lower than the number that the plan
2 proponents were espousing through Dr. Peterson?

3 A. I don't recall what the testimony was, but I would
4 not doubt that that was part of what the debtor or the
5 proponents put on there.

6 Q. Okay. The decision to settle was in part
7 motivated by an understanding that there was risk that
8 the claimants might get less than Dr. Peterson said they
9 were owed?

10 A. We settled for less than what Dr. Peterson said
11 they were owed.

12 Q. You settled for perhaps 25 percent of what
13 Dr. Peterson said was owed; is that correct?

14 A. That is inaccurate.

15 Q. Okay.

16 A. Dr. Peterson's final numbers, I believe, were
17 something in the five -- his most probable, I think, was
18 in the \$5 billion range, maybe it was a range five to six
19 or something like that, but I don't recall him ever being
20 in the \$12 billion range as the most probable range. I
21 distinctly remember the -- Mr. Austern who was the future
22 rep, and they were under the estimation in Grace than
23 what Mr. Peterson was by a substantial amount. And so
24 we had ranges that we had to deal with.

25 Q. So Mr. Ostern had an expert?

Cross - Rice

1 A. I don't remember -- I assume he did but I don't
2 remember who it was.

3 Q. But you just testified, I think, that he had an
4 expert who put a number --

5 A. He had a number. I assume he had an expert. But
6 he was represented by a guy Mr. Warrenson. They can
7 tell you.

8 Q. What was Mr. Ostern's number?

9 A. I think he was at 3.5.

10 Q. Okay. Now it's true, isn't it, that under the
11 plan, any claimant who accepts what would be the
12 scheduled amount --

13 A. Which plan are we talking about now?

14 Q. We're talking about the Grace plan.

15 A. The Grace plan. Okay.

16 Q. Any claimant who accepts the schedule amount
17 receives a payment actually substantially less than
18 \$70,000. I'm speaking of a Mesothelioma claim.

19 A. I don't remember what the proposed payment
20 percentage is right now. You may know; I don't remember.
21 But they will get whatever the agreed to payment
22 percentage is, and that's based on the asset. And if the
23 asset keeps growing, you know, it may be higher. So it
24 would be whatever the payment percentage is.

25 Q. You said the asset was about \$3.1 billion?

Cross - Rice

1 A. I think that's the current value but I'm not sure
2 of that. I think that's the current value, projected
3 value.

4 Q. Do you know -- it's true, isn't it, that over a
5 billion dollars of that money would go out the door to
6 resolve the claims backlog that has built up during the
7 2000s?

8 A. I don't know the projected timeline. But in all
9 of these bankruptcies, the front end backlog of all the
10 pending and the cases that accumulated during the
11 bankruptcy period file their claims, and they're all
12 given day one criteria or FIFO cues, first in first out
13 cues, and those cases have priority for timing of
14 payment. So most of these trusts have a substantial
15 reduction in their assets in the first couple of years
16 because of their clearing up the substantial backlog.
17 But it takes time.

18 Q. We may see half of that money go out the door to
19 satisfy those claims that have built up over the past two
20 years.

21 A. You would see a significant amount of that money
22 go to pay claimants that existed in before what -- when
23 did Grace file, 2001? 2000?

24 Q. It was April 2001.

25 A. Okay. Claimants that were pending as of 2001,

Cross - Rice

1 which are long through the tort system in most parts.

2 Q. You talked about the bankruptcy wave. And maybe
3 it wasn't as -- you suggested maybe it's not as
4 extraordinary as some of the witnesses in this case have
5 testified that it was.

6 A. I don't understand -- I mean, some of those
7 parties that are in that --- on your wave, your tall part
8 of your wave, never paid any money to anybody, or paid so
9 few people I don't understand how they could ever be
10 significant, I guess, is the point I'm saying. So I
11 don't know what the -- I don't think the significance of
12 Owens Corning filing would be the same as Bartells or the
13 same as some -- the metal company you had up there.

14 Q. Sure. Okay. But you did agree that those
15 companies in the red, they've been -- they've been
16 denominated as the top tier companies by Dr. Peterson who
17 is the expert that your committees have hired in all
18 these cases?

19 A. Beauty is in the eye of the beholder at the time.
20 They were top tier when they were the only ones left.
21 They weren't top tier in the 1990s or 1985.

22 Q. In fact, in the late '90s, right before they filed
23 for bankruptcy, they were paying most of the compensation
24 to claimants in the system.

25 A. On given cases they would have been paying

Cross - Rice

1 substantial monies. I can't say whether it's most on a
2 given case or not, but they were paying substantial value
3 on cases at the time on their bankruptcy filing. No
4 question about that.

5 Q. And those were the last of the thermal insulation
6 companies. I know there's -- Owens Illinois is still out
7 there, but those were the big thermal insulation
8 companies.

9 A. Well, they were -- some of them were the last of
10 the thermal insulation manufacturing companies, but there
11 have now been replacements. Because if you sell product
12 and you're the manufacturer, and you're the distributor
13 and you distribute it to the job site, you're also liable
14 as the distributor. So there have been other parties
15 brought in now that were peripheral five years ago or
16 nonexistent five years ago, but they now have the legal
17 responsibility. So some of that has been replaced by
18 some of the new defendants.

19 Q. Okay. What that means is where we are today is a
20 claimant today has recourse not only against a large
21 number of these trusts but also against a large number of
22 new defendants.

23 A. The claimant has the right to try to prove his
24 case against who he can.

25 Q. And claimants do that, don't they?

Cross - Rice

1 A. They try.

2 Q. They pursue claims against a lot of different
3 parties?

4 A. You've shown by the two cases that in reality you
5 only usually get four or five defendants in a case. This
6 idea that there's 90 bankrupts and I'm going to collect
7 from 90 bankrupts is ludicrous.

8 Q. By the time you get to trial, and I know we have
9 Mr. Schiller and Mr. Tanner there. By the time you get
10 to trial you've settled with most defendants, haven't
11 you?

12 A. I doubt Mr. Schiller had settlements, whichever
13 one was mainly gaskets, because you had all the gasket
14 people on the jury panel.

15 Q. Let's focus on the typical claimant.

16 A. Okay. Define typical for me.

17 Q. Typically your claimants recover from large
18 numbers of defendants, don't they?

19 A. No. Well what do you call large?

20 Q. Well, we've got the supplemental settlement
21 payment questionnaires in from your firm, so we do have
22 some --

23 A. Right. Maybe 15 or 20? Maybe 18? Maybe ten? I
24 don't think we've got any cases where we recovered from
25 30 defendants or 35 defendants. If we do, it's probably

Cross - Rice

1 an outsider.

2 Q. Then you get to go to the trust?

3 A. No. That's including trust.

4 Q. Okay. So --

5 A. Now in the premises cases -- some of the West
6 Virginia premises cases have more people. So it's just
7 going to depend on the theme. But if I'm looking at a
8 product user insulator construction -- I mean worker, I'm
9 probably going to, in any given case, recover on, you
10 know, more than five or eight but less than 20. It's
11 going to be in that range. I haven't looked at that data
12 but that's just, you know, my sense.

13 Q. Okay. You were looking at -- do you follow the
14 trusts and all the claims they get?

15 A. I go to the trust meetings. I get all the data
16 from the trusts and I meet with the trustees from time to
17 time. If that means following them? Yeah.

18 Q. You understand there's a huge amount of overlap
19 between the claims that are filed on the trusts against
20 the trusts, particularly those large trusts many of which
21 have been formed from the --

22 A. Meaning the same claimant will file a claim
23 against more than one of those trusts?

24 Q. Correct.

25 A. Yes, there's some overlap. There's some

Cross - Rice

1 significant overlap from time to time.

2 Q. Yes. And you would expect that Garlock was in
3 industries and occupations where claimants would file a
4 lot of claims against those trusts, wouldn't they?
5 Particularly the ones that were formed from the companies
6 that were formed in 2000 and 2001.

7 A. Garlock's made asbestos-containing gaskets for
8 over 80 years, going back to, what 1907? And you nicely
9 placed your name on them. So, yeah, your product is easy
10 to identify in a lot of places over a long period of
11 time.

12 Q. You were talking about some of those other
13 companies that filed for bankruptcy and how insignificant
14 they were.

15 A. Yeah.

16 Q. Some of them were pretty significant though, even
17 bigger than the ones who filed at the beginning?

18 A. Who?

19 Q. Well let's take --

20 A. Who?

21 Q. Let's take NARCO.

22 A. Who?

23 Q. NARCO.

24 A. North American Refractory?

25 Q. Yes. Did you negotiate a pre-pack with NARCO?

Cross - Rice

1 A. I did.

2 Q. And they paid -- to settle their asbestos
3 liabilities, they paid a total of \$3.8 billion in the
4 deal you negotiated?

5 A. Not the deal I negotiated.

6 Q. Well they paid two or \$3 billion to settle current
7 claimants, and then they -- now they're funding a trust
8 that's going to be about \$5 billion. Do those numbers
9 ring a bell?

10 A. The numbers you're talking about ring a bell.
11 They don't relate to the NARCO only exposure.

12 Q. Oh, okay. All right. Well the NARCO bankruptcy?

13 A. The conglomeration that they put together.

14 Q. Okay. That resulted in an \$8 billion fund?

15 A. I don't think that \$8 billion is right, but I
16 don't know the numbers. I'd have to see it before I'd
17 agree to \$8 billion.

18 Q. Anyway, that's one of those smaller --

19 A. It may be a nominal number, but it's not a present
20 number.

21 Q. It's not one of those smaller companies you were
22 talking about. It's a national company and it's going to
23 receive claims all over the country.

24 A. That's misleading because the NARCO bankruptcy had
25 successor liability issues with Honeywell and it's

Cross - Rice

1 projected to be 100 percent process. But the volume of
2 people are going to be much smaller because the exposures
3 aren't as wide. So you're saying a number that's got no
4 relationship to the point you're trying to make that
5 everybody's going to get that. That's not true.

6 Q. Okay. But what that means is those people who do
7 get it are going to get paid a really big amount?

8 A. The refractory workers? The refractory workers
9 will probably be paid well by NARCO, but they won't have
10 exposure for many of these other thermal insulation
11 companies.

12 Q. Okay. So we could look at the estimation reports
13 in that case to see what the projection is on the
14 percentage of claimants will be --

15 A. I don't remember what the estimation reports were.

16 Q. Okay. Well that would be probably a helpful
17 exercise. So DII, that's related to Halliburton?
18 They're not a small and, I think, insignificant company
19 are they?

20 A. Halliburton?

21 Q. Yeah.

22 A. No. But their asbestos arm is extremely small.
23 Halliburton -- number one, DII is not related to just
24 Halliburton. It has Dresser. It also has some A.P.
25 Greene. And it had -- Halliburton had a fabrication and

Cross - Rice

1 engineering and design business in it, so it's related to
2 that as well. They did engineering services and put in
3 spec'd boiler and things like that. So it's related to
4 that as well. So, not just asbestos product.

5 Q. Sure. But they were -- that's big. I mean a lot
6 of products were there, but a big fund.

7 A. The Dresser asbestos trust was originally funded,
8 I think, it was around \$4 billion.

9 Q. Okay.

10 A. Well it was a lot of stock. And the stock went up
11 substantially. And Mr. Greene, who was Eric Greene, who
12 was the futures rep, chose to liquidate the stock and he
13 did very well with it.

14 Q. Okay. But you said \$4 billion?

15 A. I think that's what the ultimate number was when
16 he liquidated the stock. I don't think that's what the
17 projected number was when it came out of bankruptcy. I
18 think we got, like, a \$30 a share bump on a lot of shares
19 of stock that was not totally fully anticipated. So the
20 trust ended up with more money than they thought they
21 were going to get.

22 Q. Weren't there also a couple billion that were used
23 to settle pending claims? This was a pre-pack, right?
24 So there was a settlement sort of before the funding --

25 A. Halliburton negotiated a pre-pack. I believe that

Cross - Rice

1 pre-pack process was a big number. I don't remember what
2 it was. It was in excess of a billion. Whether it was
3 in excess of two or not, I don't remember. But it wasn't
4 related to product exposure.

5 Q. But it was a big amount of money that went to
6 asbestos claims.

7 A. A big amount of money went to a lot -- several
8 tens of thousands of people participating.

9 Q. Okay.

10 A. I settled over a hundred thousand cases with
11 Halliburton.

12 Q. Okay. And there were other companies up there. I
13 mean I picked out those two. There were other companies
14 up there that were billion dollar-plus funds that were
15 formed, right? You were involved, I think, in the
16 pre-pack of Combustion Engineering?

17 A. I was.

18 Q. Over a billion dollars in that trust?

19 A. I don't remember the numbers for that but it was
20 --

21 Q. Is it one or \$2 billion?

22 A. I just don't remember the number, sitting here.
23 It was a significant number, but I just don't remember
24 what it was.

25 Q. And Congoleum.

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1 A. Congoleum?

2 Q. Yeah. Over a billion dollars?

3 A. I don't think so.

4 Q. No?

5 A. No, I don't think so. In fact, I got a -- well, I
6 don't think Congoleum was over a billion dollars.

7 Q. Okay. Well they made an insignificant product, I
8 take it, encapsulated?

9 A. They made floor tile. They made a lot of floor
10 tile, some of which contained asbestos.

11 Q. Now your expert in this case, Dr. Peterson, has
12 described Garlock as an insignificant defendant that made
13 an insignificant product. That was a quote, I believe,
14 from one of his previous engagements. Are you familiar
15 with that?

16 A. No.

17 MR. SWETT: Do we have the particular statement?

18 THE WITNESS: You will have to show me that.

19 BY MR. CASSADA:

20 Q. You do agree, don't you, compared to these other
21 companies that filed in 2000-2001, Garlock's
22 insignificant.

23 A. No, I don't agree with that.

24 Q. Okay. And the gasket is a -- it's much more
25 difficult to win a case against a gasket maker than it is

Cross - Rice

1 Owens Corning, Fibreboard, Manville and those other
2 companies?

3 A. Did I cut gaskets seven hours a day or did I put
4 up pipe and block insulation? If I cut gaskets seven
5 hours a day, it might be easier for me to win against
6 Garlock. If I put up pipe and board or boiler, it might
7 be easier for me to win against a pipe and boiler
8 company. So I can't answer your question without you
9 giving me some facts.

10 Q. Okay.

11 A. Gaskets are 80 to 90 to 100 percent asbestos pipe.
12 And block is, I believe, usually ten, 17, 18, 15 percent
13 asbestos. So there's a lot of different factors.

14 THE COURT: Let's take a break until ten minutes
15 after four, then we'll try to wind this up as quick as
16 you can and get on to something else.

17 (Off the record at 4:00 p.m.)

18 (On the record at 4:12 p.m.)

19 THE COURT: Have a seat. Mr. Cassada.

20 MR. CASSADA: Your Honor, that's all the questions
21 I have. Thank you.

22 THE COURT: I didn't mean to be that hard on you.

23 (Laughter.)

24 THE WITNESS: I wish you'd done it earlier.

25

Redirect - Rice

REDIRECT EXAMINATION

BY MR. SWETT:

Q. Mr. Rice, I just have a couple. First, in the tort system, is it common for a defendant to settle during trial?

A. Sure.

Q. Now I'd like to recall your attention to the --

MR. CASSADA: I'm sorry, I didn't hear an answer to that.

THE WITNESS: Sure.

MR. CASSADA: Thank you.

THE WITNESS: It is common for defendants to settle during trial.

BY MR. SWETT:

Q. Many trials open and never get to verdict?

A. Many trials start that don't ever go to verdict.

Q. I'd like to recall your attention to the chart that counsel put up on the board showing your resolution numbers vis-a-vis Garlock. He was pointing to average resolution amounts around \$3,500 during particular periods of time. Do you recall that?

A. The first chart about the Ness Motley numbers?

Q. Yeah.

A. Yeah. The pre- -- the early years.

Q. Then he carried it forward and he showed similar

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1 numbers, different ranges, a certain and uncertain steady
2 average or median. Could you explain to the judge what
3 was going on in the 1990s, early 2000s that puts context
4 on those numbers?

5 A. Well, Ness Motley was one of the first law firms
6 to get involved in representing railroad workers. We
7 represented large volumes of railroad workers in the late
8 '80s or, actually, in the '90s. I had a number of
9 standing settlement agreements with Garlock for the
10 railroad cases that those numbers are reflective of,
11 because I had the railroad as my primary defendant. And
12 I had FELA as my cause of action.

13 Under FELA, the negligence standard is any
14 negligence ever so slight that was, you know, so I had a
15 very different standard. So the manufacturers were not
16 an issue in our railroad cases and they were the funders
17 of the railroad litigation. So those were -- a lot of
18 those were railroad litigation, probably several thousand
19 of the cases I dealt with Garlock.

20 Q. The railroad was the target under the standard of
21 negligence that was favorable to the plaintiff and where
22 manufacturers settled, in effect, funding your claims
23 against the railroad?

24 A. Yeah. I had FELA liability against the railroad
25 where I had had to have state law liability against the

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1 manufacturers. And the causation standard in FELA is any
2 negligence ever so slight by the Supreme Court decision.

3 Q. Has there been a recent legal development with
4 respect to under the FELA?

5 A. Yes.

6 Q. What is that?

7 A. The Supreme Court preempted suits against the
8 railroad under the Boiler Inspection Act. Now I don't
9 have the railroad, so I have to go back to the
10 manufacturers.

11 Q. What does that imply for Garlock's liability where
12 it's still in the tort system?

13 A. I don't have my principal defendant that I had
14 before. So now I have to look to the manufacturers to --
15 under the state law negligence claims for compensation,
16 because the railroads had been given a free pass under
17 the Boiler Inspection Act.

18 Q. That would include the gasket manufacturing?

19 A. Garlock was huge in the railroad industry.

20 Q. Thank you. That's all I have.

21 THE COURT: Okay. Mr. Guy?

22 MR. GUY: No, sir.

23 THE COURT: You may step down. Thank you,
24 Mr. Rice.

25 THE WITNESS: Thank you. Am I excused to leave

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1 town?

2 THE COURT: As far as I'm concerned. Can he leave
3 town?

4 MR. SWETT: Your Honor, he's a client. He can do
5 as he wishes.

6 (Witness excused at 4:16 p.m.)

7 MR. WEHNER: Your Honor, the ACC calls next James
8 Patton.

9 (Witness sworn at 4:17 p.m.)

10 **DIRECT EXAMINATION**

11 BY MR. WEHNER:

12 Q. Good afternoon, Mr. Patton. Can you give us your
13 full name, please?

14 A. James Leland Patton.

15 Q. And what do you do?

16 A. I'm a bankruptcy lawyer and --

17 COURT REPORTER: Could you speak into the
18 microphone and repeat your answer?

19 THE WITNESS: Sorry. I was turning my head. I'm
20 a bankruptcy lawyer, and I'm Chairman of Young, Conaway,
21 Stargatt & Taylor.

22 BY MR. WEHNER:

23 Q. Where is that firm located?

24 A. Our main office is in Wilmington, Delaware, and we
25 have an office in New York.

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1 Q. Mr. Patton, we've asked you to come to the court
2 today to address certain assumptions made by Dr. Bates in
3 his expert opinion in this case; is that correct?

4 A. That's correct.

5 Q. Specifically, Dr. Bates' assumptions regarding
6 ballots and trust claims in asbestos bankruptcy cases.

7 A. That's correct.

8 Q. Can you give us your educational background,
9 please?

10 A. I went to Davidson College just up the road here,
11 I graduated in 1979, and I went to the Dickinson School
12 of Law and graduated in 1983.

13 Q. You're a licensed attorney?

14 A. I am. Delaware, D.C. and New York.

15 Q. Mr. Patton, can you tell us what experience you
16 had with bankruptcy generally?

17 A. Beginning in 1984, I started working on bankruptcy
18 cases. And by the late '80s I was concentrating almost
19 all my time in the bankruptcy arena. In the early days I
20 did a little bit of everything. I'm on the private panel
21 of trustees maintained by the U.S. Trustees Office. By
22 the end of the '80s I was concentrating on representing
23 companies in workouts and Chapter 11 bankruptcy cases.
24 I've been concentrating on representing debtors in
25 possession, typically business debtors, corporate

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1 debtors, ever since. I started focusing on asbestos
2 bankruptcies in 1996 when I got involved in the Celotex
3 bankruptcy case. And I've been involved in a number of
4 asbestos bankruptcies following that case.

5 Q. How many Chapter 11s, generally, have you
6 participated in through confirmation?

7 A. It's difficult to say. I think it's probably
8 somewhere north of 150, south of 200.

9 Q. Can you give us a couple of examples?

10 A. In -- well, a big marquee is the Continental
11 Airlines case back in 1991. We were lead bankruptcy
12 counsel for that. We were counsel to Columbia Gas in the
13 '90s; the Days Inn franchise in the '90s; the Lowe's
14 Financial case in the '90s. And in the 2000s we were
15 involved in the American Home Mortgage bankruptcy case,
16 we were lead counsel in that matter; the Aventine fuel
17 oils -- biofuel case. More recently, we represented --
18 we had two cases in New York where we were asked to
19 represent a special committee of the Board of Directors
20 to see and steer a company through its restructuring, the
21 Boston Generating case and the Dynogen case. And we're
22 about to come up to confirmation in the Kodak case in New
23 York where we're working with Sullivan Cromwell as
24 debtor's counsel.

25 Q. What jurisdictions have you worked in?

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1 A. Well, New York and Delaware. I've been in
2 bankruptcy court in Tampa. I've been in bankruptcy court
3 in New Orleans. I've been in Minneapolis, Pennsylvania
4 and others, but those are the dominant ones.

5 Q. You alluded to this just a second ago but, do you
6 have experience with asbestos bankruptcies and the
7 asbestos trusts that result from those bankruptcies?

8 A. I do. As I said, it started in 1996 when I was
9 asked to represent the future claimants representatives
10 in the Celotex bankruptcy case. Actually, that was '95,
11 I believe, when that started. And following the Celotex
12 case, I was asked to represent the company in the Fuller
13 Austin case, and that turned out to be the first
14 successful pre-pack of an asbestos bankruptcy.

15 Following Fuller Austin, we got involved in the
16 Babcock and Wilcox case down in New Orleans, and then a
17 long string of asbestos cases following that. Most of
18 the time -- in fact, all of the time, except for Fuller
19 Austin, I'm representing the future claimants
20 representative or, in a few cases, I actually am the
21 future claimants representative.

22 Q. About how many asbestos bankruptcies have you been
23 involved in in one way or another?

24 A. I think the number is around 33 or so. Whatever
25 the sum of that is represents the cases I've been

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1 involved in.

2 Q. We've put up on the screen a list of asbestos
3 bankruptcies. Are those the ones you've been involved
4 in?

5 A. It is. That is the list. I should point out that
6 the Combustion Engineering case is on here. I was a
7 court-appointed mediator in that case, which is the only
8 case where I've fulfilled that function.

9 Q. You mentioned this briefly, but what role have you
10 played in these bankruptcies as counsel for the FCR?

11 A. Fuller Austin I represented the companies. In the
12 others I represented the future claimants representative,
13 with the addition that in some cases I am the future
14 claimants representative. And in Combustion, I'm a
15 mediator.

16 Q. Do you have any role in the asbestos trusts that
17 are created as part of these asbestos bankruptcies?

18 A. I do. With three exceptions, I continue to
19 represent the future claimants representative following
20 confirmation as his counsel in connection and in
21 connection with -- they're all his -- in connection with
22 his role as a futures' rep under the trust.

23 Q. Can you just explain for a second what the FCR
24 does after the confirmation when there's a trust?

25 A. Well, it's similar to the function that the FCR

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1 performs during the bankruptcy case in the sense that the
2 future claimants representative is there to protect the
3 interests of the future claimants as that class may exist
4 at any moment in time as we roll forward. The activities
5 that we engage in change post-confirmation.

6 The relationship between the future claimants
7 representative and the present claimants becomes a little
8 bit more adversarial. We are in the -- in an exercise as
9 we move through time following confirmation of making
10 sure that there are going to be sufficient funds to pay
11 future claims in a manner substantially similar to the
12 present claims. And the way that -- the principal way
13 that we accomplish that goal is by policing the payment
14 percentage, the amount of assets available to pay the
15 expected pending and future claims, and sometimes on an
16 annual basis we will get into arguments about what the
17 appropriate payment percentage is.

18 It's the duty -- it's the responsibility of the
19 trustees to -- in the first instance to police that
20 issue. But when there is a concern about whether or not
21 the payment percentage is appropriate, the present
22 claimants, who are represented by a group that's called
23 the Trust Advisory Committee, and the future claimants
24 representative often square off and debate the issue and
25 work through to a resolution.

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1 Q. About how many asbestos trusts do you represent
2 the FCR in?

3 A. I think it's around 13.

4 Q. Thirteen?

5 A. I think that's right.

6 Q. In representing the FCR in the trust context, do
7 you review individual trust claim submissions?

8 A. No. The role of the FCR, and also the Trust
9 Advisory Committee, is one that -- it takes place at the
10 policy level. We address policy concerns raised by the
11 trustees. We address policy concerns that we, ourselves,
12 have with respect to the operation and funding of the
13 trust. But the particular review and resolution of a
14 specific claim happens at the Claim Administration level.
15 And the only time we see any specific information about a
16 specific claim would be, and even then we may not have
17 identifying information, would be if there has been -- if
18 a problem has been identified with respect to the claims
19 through a claim audit process or some other mechanism.

20 Q. Your Honor, we tender Mr. Patton as an expert in
21 the process of bankruptcy reorganization and,
22 particularly, the process of asbestos bankruptcy,
23 reorganization and in the creation, organization,
24 operation of asbestos trusts.

25 MR. WOLF: Brief voir dire, Your Honor?

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1 THE COURT: All right.

2 COURT REPORTER: Sir, what's your name?

3 MR. WORF: Richard Worf, W-O-R-F, for the debtors.

4 **CROSS-EXAMINATION**

5 BY MR. WORF:

6 Q. Mr. Patton, you're going to testify concerning
7 your view regarding the meaning of ballots and trust
8 claims; correct?

9 A. That's correct.

10 Q. Ballots are legal documents approved by the
11 bankruptcy court?

12 A. They are.

13 Q. And the certifications in those ballots that
14 claimants or their attorneys sign when they submit the
15 ballots are part of those legal documents; correct?

16 A. That's correct.

17 Q. Trusts are constituted by legal documents in
18 bankruptcy plans, including the plan itself, trust
19 agreements, and trust distribution procedures approved by
20 the bankruptcy court?

21 A. Those are the documents that define -- those are
22 the operative documents. The trust is constituted by the
23 trust agreement itself, if that's helpful.

24 Q. Right. It's a creature, ultimately, of those
25 documents; correct?

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1 A. Correct.

2 Q. And the trust distribution procedures define the
3 exposure and other requirements that the claimants must
4 meet in order to make a claim against it to be paid by
5 the trust?

6 A. It describes them -- many of them, and it
7 describes them at a high level, but that's not the end of
8 the question with respect to what requirements will need
9 to be met by claimant.

10 Q. You attached a list of reliance materials to your
11 expert report; correct?

12 A. Yes.

13 Q. And 11 full pages out of the 12 pages that are
14 attached are references to docket entries in various
15 asbestos bankruptcy cases; correct?

16 A. That's correct.

17 Q. And then the only other entries on there are a
18 list of trust websites, excerpts from deposition
19 testimony given by certain law firms in this case, and
20 then also a summary given to you by Dr. Peterson's firm?

21 A. I believe that's correct.

22 Q. And you agree that legal matters underlie your
23 opinions in this case and every aspect of them; correct?

24 A. Broadly, that would be correct.

25 Q. Your Honor, we object to Mr. Patton's testimony

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1 on the ground that he's doing nothing more than
2 interpreting legal documents, including trust claim forms
3 and ballots, which is not admissible expert testimony
4 under Fourth Circuit precedent, including *United States v*
5 *Barile*, 286 F.3d 749, 70, 2002.

6 THE COURT: We'll admit him as an expert and rely
7 on what I think is reliable and not rely on what I don't
8 think is reliable.

9 MR. WOLF: Thank you.

10 THE COURT: We'll deal with it that way.

11 MR. WEHNER: Your Honor, we're going to be looking
12 at some documents. I have a notebook I'd like to hand to
13 the witness, if that's all right.

14 THE COURT: All right.

15 MR. WEHNER: Your Honor, I have a copy for you if
16 you'd like.

17 THE COURT: Sure.

18 MR. WEHNER: We're going to try to put it up on
19 the screen but, if you would like a copy too.

20 THE COURT: All right.

21 **CONTINUING DIRECT EXAMINATION**

22 BY MR. WEHNER:

23 Q. Mr. Patton, before we get started on your
24 opinions, can you tell us what work you did to come --
25 you and your colleagues did to come to your opinions in

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1 this case?

2 A. Well we -- as Mr. Worf pointed out, we reviewed a
3 lot of pleadings. We reviewed all of the ballots, all of
4 the solicitation instructions, all of the orders
5 approving solicitation, and the plans and disclosure
6 statements and TDPs -- I say "all." Almost all. -- in
7 around 30 cases and focused in some detail on how the
8 balloting was set up in those cases; and also focused on
9 the rules that were established in those trusts -- in
10 those cases where trusts were formed with respect to
11 submitting claims to the trusts.

12 Q. Let's just get to your opinions head on and then
13 we'll go back and we'll talk about them in some detail.
14 Mr. Patton, can Dr. Bates assume that a claimant who
15 casts a ballot in an asbestos bankruptcy knows with any
16 certainty that he or she was exposed to the product of
17 that asbestos debtor?

18 A. No, he can't make that assumption.

19 Q. Can Dr. Bates assume that a claimant who casts a
20 ballot in an asbestos bankruptcy has gathered all the
21 proof and evidence of the claimant's exposure he or she
22 would have needed to prevail against the asbestos debtor
23 pre-petition?

24 A. No, he can't make that assumption.

25 Q. Can Dr. Bates assume that a person who files a

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1 claim with an asbestos trust knows he or she was exposed
2 to the product for which the debtor that formed the trust
3 was responsible?

4 A. No, he cannot make that assumption either.

5 Q. Can Dr. Bates assume that a person who files a
6 claim with an asbestos trust has gathered all the proof
7 and evidence of his or her exposure it would need to
8 prevail against the debtor that formed the trust?

9 A. He also cannot make that assumption.

10 Q. Let's just step back for a second and get the
11 bigger picture before we start looking at these
12 documents. Can you explain briefly, Mr. Patton, how an
13 asbestos Chapter 11, where 524(g) protection's on the
14 table, is different from a non-asbestos Chapter 11,
15 particularly as it relates to identifying creditors and
16 soliciting their votes, confirming the plan, and paying
17 their claims?

18 A. Sure. The principal area where there's a
19 difference between an asbestos bankruptcy and a
20 conventional bankruptcy, if there is such a thing as a
21 conventional bankruptcy, is in the area of his treatment
22 of creditors. In a regular bankruptcy case, we're all
23 familiar with these steps. Following the filing a
24 committee is formed, lawyers representing multiple
25 parties file 2019 statements. A bar date's established.

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1 Proofs of claim are filed. The Debtor and other parties
2 address the claims as they see fit. There's a plan. If
3 the solicitation is successful, the plan's confirmed and
4 there's a discharge.

5 In an asbestos bankruptcy, the differences appear
6 early. We've already reached the stage in this case of
7 having an FCR and an ACC appointed. 2019s in the modern
8 world are now a little different because the rule has
9 changed and lawyers voting -- casting ballots for
10 multiple parties no longer have to file 2019 statements.

11 The plan has, in addition to the plan, a trust
12 document and a trust -- a set of trust distribution
13 procedures that have to be negotiated with the asbestos
14 parties, including the FCR. And there is voting -- and
15 let me pause there. Because what's missing in this list,
16 as we've created it, is the establishment of a bar date
17 for asbestos claims. A few of the asbestos cases have
18 established bar dates. So far, in every case, that's
19 been a frolic and a detour.

20 Most of the cases do not establish bar dates for
21 asbestos claims, and that creates a very interesting
22 challenge for us in asbestos cases when you get to the
23 question of voting because, as we all know, under 1126
24 and Rule 3018 only claims that are allowed can vote. An
25 unliquidated tort claim is not an allowed claim unless a

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1 proof of claim is filed.

2 And so the process by which we solicit votes from
3 the category of asbestos claims has evolved over the
4 years in some interesting ways. Also, we have a very --
5 a specific voting requirement in 524(g) that appears at
6 524(g)(2)(B)(ii)(IV)(bb).

7 Q. You can say that.

8 A. Yeah. Well, that's it's. We'll see how many
9 times today I can say it accurately. This section has
10 caused problems for those of us working in these cases
11 since Celotex, which was the first case I worked on. It
12 Came out right after the enactment of 524(5). And
13 524(g)(2)(B)(ii)(IV)(bb) says something that's very
14 different from what 1126 says, and it uses a very
15 different language. It talks about the requirement that
16 a class of the claimants whose claims are to be addressed
17 by a trust must vote. And what's missing from here is
18 any reference to a claim allowance. There is no
19 reference to Rule -- I'm sorry, Section 502 and the
20 requirement that the claims be filed. It talks about
21 claims that are going to be addressed by a trust. And,
22 remember, when 524(g) was enacted, the model was
23 Manville.

24 And what is happening in these cases is a trust is
25 being established, and the trust is going to be resolving

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1 -- addressing all of these claims and deciding which
2 claims are going to be recognized and paid and which
3 claims are not going to be recognized and paid. This
4 section appears to be setting a standard that's different
5 from that required under 1126 and Rule 3018. That is,
6 unfiled claim, claims to be addressed by a subsequent
7 trust are to vote.

8 The other thing that's interesting is 1126 and
9 Rule 3018 don't use the word "vote." It appears in very
10 few places in the Code and Rules. And here, the statute
11 specifically talks about voting. It talks about voting
12 by a 75 percent super majority. And it talks about
13 voting without reference to whether it's a head count or
14 whether it's by amount of claim.

15 MR. WOLF: Your Honor, same objection to the
16 testimony about what the law is.

17 THE COURT: Overruled. Go ahead.

18 THE WITNESS: So this created a challenge for us
19 in figuring out how to go about preparing motions to ask
20 the court to approve some mechanism for gathering the
21 vote from asbestos victims in our bankruptcy cases. The
22 early questions we wrestled were, is this a section that
23 should supersede 1126? Is this a section that needs to
24 be satisfied in parallel with 1126? And we concluded
25 that the only sensible approach was to not try to resolve

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1 the issue but just simply seek to satisfy both standards,
2 since we thought we could, because in every case so far
3 we're dealing with what amounts to a settlement by the
4 time we get to the plan that is actually confirmed.

5 There's an agreement among the principal
6 constituents -- constituent classes, the asbestos
7 classes, and the debtor. So it really didn't matter
8 whether we wrestled to the ground how this and 1126
9 interplay, other than we had to have a mechanism in place
10 to make sure we satisfied both requirements. Because
11 524(g) makes it clear that if you don't satisfy this
12 provision, you don't, "you" being a debtor, doesn't -- a
13 debtor doesn't enjoy the benefits of the channeling
14 injunction.

15 Q. You just mentioned the words "channeling
16 injunction." Is that what sweeps all claims into the
17 trust?

18 A. Right. 524(g) makes clear that if a debtor
19 satisfies the various requirements of that statute, then
20 it will receive, as part of its discharge, an injunction
21 that channels all pending and future asbestos claims to a
22 trust that's been established for the purpose of
23 addressing asbestos claims. And so as we were developing
24 the motions that we were going to submit to the courts in
25 the early cases asking for voting procedures, we had in

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1 mind the requirement -- the requirements of 524(g) and
2 the requirements of 1126 and sought to create a mechanism
3 that would ensure that we would be able to satisfy both
4 of those standards -- that we'd be able to get votes from
5 claims that were to be addressed and claims that were to
6 be -- that were allowed under 1126.

7 Now, that creates a problem under 1126 because we
8 don't have claims filed. We decided to try to convince
9 the court to rely on the temporary allowance rules that
10 are available under Rule 3018. It's a bit of a stretch,
11 because 3018 applies only with respect to a claim that's
12 been filed and objected to. But we argued that what
13 we're going to do is we're going to pretend that a claim
14 has been filed. We're going to then pretend that an
15 objection has been filed to that claim and that that
16 pretend objectionable claim is going to be temporarily
17 allowed in an amount that is consistent with the amounts
18 that the trust distribution procedures will assign to
19 those claims and, on that basis, allow claims to vote.

20 Moving through the timeline here. After getting
21 the votes from the asbestos creditors and if we're able
22 and confirming a plan of reorganization, then and only
23 then is the trust formed and the trust, under the trust
24 distribution procedures, is instructed to take steps to
25 complete the process of developing the materials that

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1 will be needed for creditors to make claims to the trust.

2 They have to -- the trustees are instructed to
3 develop claim forms and claim materials. The trusts, at
4 this point, set up websites and will also prepare
5 additional materials, like the site list that we've heard
6 about already. And once all of those steps have been
7 accomplished, the trust opens its doors and claimants
8 begin presenting claims. And it's only then, long after
9 plan confirmation, that asbestos claims get filed,
10 evaluated and paid or not.

11 Q. Let's focus in on the ballots, in particular,
12 right now. How have ballots been structured in asbestos
13 bankruptcies?

14 A. Well in the early days they were -- they were
15 quite simple. The documents provided, in many cases, for
16 a one dollar, one vote assignment of value; and the party
17 casting the ballot needed to identify themselves and
18 indicate whether they supported the plan or not, and that
19 was about it. Beginning in -- well, in Armstrong, a
20 conversation began among the asbestos bar itself and with
21 the insurers. Each had a set of issues they wanted to
22 address in the balloting process.

23 We developed a more complicated ballot in the
24 Armstrong case that is similar to what we're using today.
25 The ballot assigns the disease values to disease

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1 categories. Those values and the criteria associated
2 with those disease categories are borrowed from the trust
3 distribution procedures. And in Armstrong what was going
4 on was the plaintiff's bar decided that it was
5 appropriate to move away from the one dollar per claim
6 rule and give some weighting to recognize that
7 Mesothelioma claims are considerably more valuable than
8 the claim of a, or can be, a claim of an unimpaired or
9 non-cancer victim.

10 And the insurance companies got involved because
11 they were worried that this temporary allowance device we
12 had come up with was going to somehow hurt them. They
13 wanted to make sure that nothing we did in getting
14 ballots in would create any presumption that there was
15 any legitimacy to the information in the ballot or that
16 the ballots were in any way a claim that could be -- that
17 could be used against them because they were -- they were
18 worried that they would then have to file objections to
19 all of these ballots on the basis of their status as
20 claims. So the ballots, in some cases -- and in most
21 cases the solicitation rules made clear that the ballots
22 are to be used for voting purposes only; that they have
23 no impact on any other aspect of the case. They can't be
24 used as claims. They can't be used in -- by any party in
25 any other context.

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1 And once we worked out the competing interests of
2 the folks who were involved in those cases, we settled on
3 what is now the modern ballot form that has the parties
4 casting ballots identify the disease criteria -- I'm
5 sorry. The disease level that best fits their situation.
6 The person casting the ballot tells us whether or not
7 they support or not the plan. They certify that they,
8 you know, have a good faith basis to think they have a
9 claim and cast their ballot.

10 Q. Just as a matter of mechanics. Do individual
11 asbestos claimants cast separate ballots?

12 A. They can. But most of the time ballots are cast
13 by law firms using a Master Ballot structure that we
14 borrowed from the bond holder cases. And we allow law
15 firms to collect information from their clients and cast
16 a single ballot that reflects the vote of many or all of
17 their clients. Often, these Master Ballots will be
18 ballots cast for thousands of claimants at a time.

19 Q. You said that a ballot is not an assertion that
20 the voter knows they were exposed to the asbestos product
21 for which the debtor is responsible and it's not an
22 assertion that the voter has all the proof of exposure in
23 hand necessary to prevail against the debtor. Right?

24 A. That's correct.

25 Q. Why is that?

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1 A. Well, at a very high level, remember 524(g) tells
2 us that we have to get the vote from every party who's
3 going to -- whose claim is going to be channeled to the
4 trust. And the trust is going to, at some point, open
5 its doors and establish the rules for submitting claims.
6 Parties voting on this plan are voting on the fairness of
7 that trust and its settlement rules. We want to make
8 sure that we've given an opportunity to every party whose
9 claim is going to be addressed by the trust to cast a
10 vote. If we -- if we fail to satisfy that requirement,
11 the debtor will be at risk, and it's at risk of having
12 someone later challenge the efficacy of its channeling
13 injunction. So enfranchisement of every party whose
14 claim is going to be addressed or might be addressed by
15 the trust even if the trust is going to disallow it is
16 the operating paradigm. That's the starting point.

17 But in addition, as I alluded to, at the time the
18 ballot is cast, two things are going on. The law firm
19 who's casting the ballot will have clients in their shop,
20 I imagine, that may have claims that are fully worked up
21 that clearly know that they've got all the exposure
22 evidence they need to establish the liability of this
23 asbestos debtor. They will have -- they may well have
24 clients in their shop whose claims are fully worked up
25 where they know full well that this asbestos debtor has

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1 no liability, and then clients everywhere with a level of
2 development of their claim everywhere in between those
3 two bookends.

4 The client needs to have -- the claimant needs to
5 have some good faith basis to think they have a claim
6 against this entity or that they're likely to be able to
7 file a claim with the trust. And if it's the
8 Mesothelioma victim who walks into the lawyer's office
9 three weeks before the balloting deadline, the level of
10 information may be nothing more than, I've done some work
11 and I can't rule out this particular defendant and I
12 better vote that ballot. Or, it could be the fully
13 worked up case. So from the point of view of this rule
14 of enfranchisement, we want all of those Mesothelioma
15 victims who think they might be participating in this
16 trust to vote.

17 The other thing that we know is going on at the
18 moment these ballots are cast is the rules for allowing
19 claims have not yet been set because the trust hasn't
20 been established. The trust hasn't set up its site
21 lists. The trust hasn't even prepared its claim form
22 yet. So individuals who are voting don't know yet what
23 will be acceptable or not to the trust for the submission
24 and allowance of claims.

25 So, for all of those reasons, it's not the case

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1 that a ballot cast is a statement of knowledge by the
2 claimant that he or she knows to any certainty that they
3 have exposure to that company's product or that they have
4 in hand the evidence and proof necessary to prevail on
5 their claim.

6 Q. I'd like us to look at some real examples of
7 ballots, and we have some in the materials that I put in
8 that binder. Can we take a look at one?

9 A. Absolutely. Why don't we start with the
10 Armstrong?

11 Q. Before we get started. What was your role in the
12 Armstrong case?

13 A. I represented the future claimant representatives,
14 along with Kay Scholer in that case.

15 Q. Okay. In the ballot materials and order for the
16 Armstrong case, where do we start to understand what's
17 going on in a ballot?

18 A. Let's start with the -- let's start with the
19 ballot itself. And let's start with the Master Ballot,
20 since that's the predominant way in which ballots are
21 cast, rather than the individual ballots, and focus on
22 what somebody will see when they begin the process of
23 answering the question, does my client have the right to
24 vote on this particular plan?

25 And the Master Ballot tells us that --- if you go

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1 to page two of the Master Ballot, one thing that's
2 important to focus on is right below the boxed area, it
3 tells us that there is a place to go to find the
4 instructions for the disease categories. If you go up
5 just a little bit at the top there where it says "see
6 instructions for explanations of disease categories."

7 And then we find disease categories. And these
8 categories, Mesothelioma, lung cancer one, lung cancer
9 two, these are categories created in the trust
10 distribution procedures which are attached to the plan.
11 And the contents of this ballot reflect a shorthand
12 reference to what's in the trust distribution procedures.
13 So, we see that the party casting the ballot, and this is
14 a Master Ballot, they have to identify how many claimants
15 are in each category and whether they accept or reject
16 the plan.

17 And after they've filled out that information for
18 each of their clients on this Master Ballot, if we turn
19 to page three, we get to the area that is of significance
20 here. These are the certifications. And the third
21 bullet point tells us that each disease category
22 indicated with respect to each holder of an asbestos
23 personal injury claim -- and by the way, that's a defined
24 term in this ballot, and I'll come back to that in a
25 minute. Each holder of an asbestos personal injury claim

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1 on this exhibit accompanying this Master Ballot is true
2 and correct.

3 So a lawyer representing a client, or multiple
4 clients, has to certify that the disease category is true
5 and correct. And in answering the question whether --
6 what that means, what's required in order to sign that
7 certification, the first place he would go, or she would
8 go, would be to the instructions that accompany the
9 ballot, and they follow the ballot. If you turn to page
10 -- if you turn to page five, it tells us that the Master
11 Ballot is not to be used for any purpose other than to
12 transmit the votes to accept or reject the plan. As I
13 said, this was something that was near and dear to the
14 insurers.

15 If you turn to page seven, we find there is an
16 explanation of the requirements for disease category and
17 claim amount for voting purposes. Let's focus on the
18 Mesothelioma category. It tells us that a Mesothelioma
19 claim will get to vote in the amount of \$130,500. And
20 there are two bullet points below it and it says,
21 diagnosis of Mesothelioma and AWI exposure. Again, this
22 comes from the trust distribution procedures.

23 AWI exposure a defined term. If we turn to page
24 eight of the instructions, Item 12, it tells us that AWI
25 exposure is meaningful and credible exposure to asbestos

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1 or asbestos-containing products, supplied, specified,
2 manufactured, installed, maintained or repaired by AWI
3 and/or any entity, including an AWI contracting unit for
4 which AWI has legal responsibility. That's a near quote
5 of the defined term in the trust distribution procedures.

6 So the party signing this has to be -- has to say
7 that they believe that they have a good faith basis to
8 assert they've got a Mesothelioma claim and that they
9 have AWI exposure. And to the extent they are still
10 uncertain about whether or not this client of theirs, who
11 hasn't yet worked up their case fully, can satisfy these
12 requirements.

13 We turn next to the -- we turn next to the order
14 that approved these voting procedures. And if we focus
15 on page three and begin with the fourth decretal
16 paragraph on the second line. It says, "The ballots and
17 the values assigned for asbestos personal injury claims
18 therein shall not be used for any purpose other than to
19 determine whether or not the voting requirements of
20 Section 524(g)," that's the "to be addressed" test, "and
21 1126," that's the "temporarily allowed" test, "of the
22 bankruptcy code have been satisfied."

23 And this language is significant because it
24 highlights the point that I made that what one finds in
25 the ballot when one focuses on these disease levels is

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1 language that's borrowed from the TDP. And what's going
2 on is an exercise in simply using the TDPs as a shorthand
3 to figure out or to establish a value for each of the --
4 for each of the claims that are being voted.

5 At the end of that paragraph, at "iii," it says,
6 "The information contained in a ballot submitted by the
7 holder of an asbestos personal injury claim shall have no
8 bearing upon, and shall be inadmissible in any proceeding
9 to determine the merits of such individual's personal
10 injury claim."

11 And then the last decreedal paragraph says, "The
12 designation of disease categories by holders of asbestos
13 personal injury claims in each ballot shall be used for
14 voting purposes only and shall not be binding on AWI, on
15 the asbestos personal injury trust, Liberty Mutual
16 Insurance, or any other party except for voting
17 purposes." Again, there's a defined term here, "asbestos
18 personal injury claim."

19 Q. Where do we find that defined?

20 A. Take a look at -- if we take a look at the plan,
21 which is ACC- --

22 Q. 641(b)?

23 A. 641(b). We'll see the definition of "asbestos
24 personal injury claim." We've already seen it in
25 connection with, I believe it was Mr. Rice's testimony.

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1 This is the definition of the class of claims that are
2 being channeled to the trust. Every entity, or every
3 individual who has a claim that falls within this
4 definition, has a claim that if presented to the trust
5 will be addressed by the trust and under 524(g) needs to
6 vote.

7 And focusing on the -- I won't dwell on this
8 because we went through how broad this definition is with
9 Mr. Rice. But it's -- you know, it's every claim,
10 whether or not the facts or legal basis therefore are
11 known. So this is the class that 524(g) talked -- this
12 definition here is what the plan uses to create the class
13 that 524(g) is referring to when it says that every --
14 that votes are solicited from those whose claims are
15 going to be addressed by that class.

16 And then one last place to look is back in the
17 instructions attached to the order approving the plan.
18 That's page A-9. Under calculation of votes with respect
19 to asbestos personal injury claims, now that we know what
20 that defined term is. (b)(i) says, "Each holder of an
21 asbestos personal injury claim will have a single vote in
22 an amount that will be based upon the type of disease
23 that forms the basis for such holder asserting such
24 holder's asserted personal injury claims."

25 So the order approving the balloting and the

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1 instructions attached to the order brings us full circle
2 to where we started. The definition of "asbestos
3 personal injury claim" defines that class; it's as broad
4 as possible. The language you find here makes clear that
5 we're trying to satisfy the requirements of
6 524(g)(2)(B)(ii)(IV)(bb), and each holder of an asbestos
7 personal injury claim will have a single vote, and that
8 the only limitation is that it will be based on the
9 amount that's assigned to that disease in this TDP.

10 And so for the lawyer who's looking at that
11 certification that we started with and trying to decide
12 whether or not my claim -- my client's claim can be voted
13 will answer the question in favor of voting in any
14 context whether it's some good faith basis to believe
15 that there either is a claim or could be a claim once the
16 trust opens its doors such that that claim may be
17 addressed by that trust.

18 Q. Does anything in this Armstrong ballot and
19 associated materials require the voting claimant to know
20 they were exposed to an Armstrong product or have proof
21 in hand of exposure?

22 A. No. And there's nothing that -- it doesn't say
23 that. And there's nothing in here that, by implication,
24 requires it.

25 Q. Let's take another example.

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1 A. Let's take a look at Owens Corning then.

2 Q. Owens Corning or Pittsburgh Corning?

3 A. I'm sorry, Pittsburgh Corning. One of the
4 Cornings.

5 Q. What was your role in the Pittsburgh Corning case?

6 A. I represent the future claimants' representative.
7 Again, let's start with the ballot.

8 Q. I think that's ACC-480?

9 A. I believe that's right. Yes, ACC-480. Focusing,
10 again, on the Master Ballot. It looks similar. The
11 formalities and layout's a little different, but it looks
12 similar to the Armstrong ballot. Let's turn straight to
13 the certification. So the counsel who picks up this
14 ballot and tries to answer the question, who among my
15 clients is qualified to be included on the ballot as a
16 party voting in favor or against the plan will come to
17 the certification in item three. And reading through
18 this, they will see in (a) that they -- that they, the
19 lawyer, must certify that the clients are holders of
20 channeled asbestos PI Trust claims. That's a defined
21 term.

22 And in (c), we find that there's a certification
23 that says that each individual holder of a channeled
24 asbestos PI Trust claim on the Master Ballot exhibit is
25 -- I'm sorry. The disease category indicated is based on

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1 medical records or similar documentation of such holder's
2 file, and that the undersigned is authorized by each
3 holder of a channeled asbestos PI Trust claim listed on
4 the exhibit accompanying this Master Ballot to represent
5 the disease category for each such claimant.

6 What's significant here is this is the first time
7 we've seen a requirement that there be a certification as
8 to the level of information that's in the law firm's
9 files with respect to the client whose claim is being
10 voted. And the documentation or the information that's
11 required only pertains to the medical. There's no
12 requirement in here that there be any certification, that
13 there's any specific level of knowledge or information
14 with respect to exposure. So the lawyer who's looking at
15 this certification, who's struggling with the question of
16 exposure, understands that there's a distinction being
17 made between those two categories.

18 In trying to answer the question further, the
19 lawyer will have to turn to the instructions that go
20 along with the ballot. If you focus on item number four,
21 one of the first things that we see is an instruction
22 that, "The Master Ballot may not be used for any purpose
23 other than to transmit the votes to accept or reject the
24 plan." Again, this is to have very limited application.

25 Item number 12 tells us that the party casting a

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1 ballot must also assign a disease category to the claim
2 of each claimant chosen from the following categories,
3 using the stated criteria from Section 5.3(a)(3) of the
4 asbestos PI Trust distribution procedures attached to the
5 plan as Exhibit B. Again, telling us that what follows
6 is an excerpt from the trust distribution procedures and
7 is shorthand for that.

8 And if you will look down just below item number
9 12, the Mesothelioma disease category appears and we see
10 what will be required of the claimant once the trust
11 opens its doors, at least part of what will be required
12 of the claimant once the trust opens its doors, in order
13 to submit a claim to the trust and have it recognized and
14 paid. The claimant will have to have a diagnosis of
15 Mesothelioma and credible evidence of exposure to
16 Unibestos during the period July 1, 1962 to December 31,
17 1972 or to another asbestos-containing product
18 manufactured and marketed, sold or distributed by PCC
19 prior to December 31.

20 To the extent that the lawyer filling out this
21 ballot continues to need clarification, the next place to
22 look will be to the order that approved or authorized
23 these voting procedures. Actually, this is an exhibit
24 attached to the order I believe. And under (b),
25 calculation of votes with respect to channeled asbestos,

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1 PI Trust claims (i), we learn that each holder of a
2 channeled asbestos PI Trust claim will have a single vote
3 in class five in an amount that will be based upon the
4 designated disease level described below that forms the
5 basis for such holder's asserted channeled asbestos PI
6 Trust claim.

7 What's important here is the party casting the
8 ballot understands that what's going on is the reference
9 to the disease categories is only to provide a source for
10 the amount of the claim. But if one believes one is a
11 holder of a channeled asbestos PI Trust claim, one will
12 have a vote. So looking at the definition of "channeled
13 asbestos PI Trust claim" becomes important in analyzing
14 the question of who gets to vote on this ballot.

15 The next paragraph begins with the sentence, "The
16 designation of the disease level by the holder of a
17 channeled asbestos PI Trust claim or his or her attorney
18 will be for voting purposes only and not be binding upon
19 the holder, the debtor, or the asbestos PI Trust for any
20 purpose other than for voting on a plan."

21 And the final sentence of that paragraph says, "In
22 the event no disease level is selected by or on behalf of
23 a holder of a channelled asbestos PI Trust claim, the
24 voting agent shall designate disease level one for voting
25 purposes only." So a party doesn't even have to pick a

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1 disease level in order to vote on the plan.

2 So let's turn to the plan, because that tells us,
3 when we work our way through the definitions, who is in
4 the category of channeled asbestos PI Trust claims.

5 Q. And that's who can vote?

6 A. That is who can vote. That is who is in the class
7 that's being channeled to the trust. That tells us who
8 will have their claims addressed by the trust. And that
9 will tell us whether or not the party has a right to vote
10 in order to satisfy 524(g)(2)(B)(ii)(IV)(bb).

11 The Pittsburgh Corning plan begins with the search
12 through the plan for this definition. It takes us to
13 channelled asbestos PI Trust claim, and that cross-
14 references another definition which is asbestos PI --
15 sorry. Channeled asbestos PI Trust claim cross-
16 references asbestos PI Trust claim. So we have to turn
17 to asbestos PI Trust claim. Asbestos PI Trust claim is
18 all asbestos personal injury claims.

19 Q. They don't make this easy, do they?

20 A. They do not. So we have to go find asbestos
21 personal injury claims. And to the extent my involvement
22 in this case contributed to this problem, I apologize.

23 And finally, when we get to the asbestos personal
24 injury claim, what we see is a definition that is not
25 unlike the definition in Armstrong. It tells us that any

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1 past, present or future claim that could be brought
2 against this list of entities that appears in
3 subparagraphs (a) through (g) that arises -- if you
4 scroll down to the paragraph below the list, this is the
5 meat of the definition.

6 Again, a lot like the Armstrong definition, this
7 is any claim under any theory for asbestos -- for
8 exposure to asbestos or asbestos-containing products or
9 materials of any party, not just those manufactured by
10 PPG for which PPG has liability under any theory of law,
11 statute, equity, admiralty or otherwise.

12 Q. So if somebody believes they have a claim against
13 Pittsburgh Corning but they don't have evidence in hand
14 of exposure, do they have a channeled PI Trust claim?

15 A. Of course.

16 Q. Would they be channeled to the trust?

17 A. Of course. That's certainly what everybody who
18 participated in preparing this plan believes, and that's
19 certainly what Pittsburgh Corning hopes.

20 Q. They would be then entitled to vote?

21 A. Yes.

22 Q. Anything in these Pittsburgh Corning ballot
23 materials require that a claimant have proof in hand of
24 exposure to a Pittsburgh Corning product or know they
25 were exposed to a Pittsburgh Corning product?

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1 A. No.

2 Q. The only evidence that's required that they need
3 to have in hand is their medicals?

4 A. That's right.

5 Q. We have prepared the Owens Corning case, also. If
6 we went through the Owens Corning ballot materials, we
7 would come to a similar conclusion about the Owens
8 Corning case; is that not correct?

9 A. That's correct.

10 Q. If we went through those Owens Corning ballot
11 materials, we would come to the conclusion that if
12 somebody has a good faith belief they had a claim against
13 Owens Corning but didn't have evidence in hand of
14 exposure, they would be chaneled to the trust and be
15 entitled to vote; is that correct?

16 A. That's correct. That's correct. All one needs is
17 a good faith basis to think that they have a claim or may
18 be filing a claim with the trust.

19 Q. Does the Owens Corning ballot and ballot materials
20 require that a claimant who votes have proof in hand of
21 exposure to an Owens Corning product or know they were
22 exposed to an Owens Corning product?

23 A. Not at all.

24 Q. Let's turn, Mr. Patton, away from ballots and to
25 trust claims themselves. So now the balloting has been

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1 completed, the claim is confirmed, the trust has been set
2 up, and the claimants are making claims to a trust. What
3 documents govern whether a trust will pay a claim?

4 A. Well the two primary documents we've mentioned
5 already. Those are the trust agreement itself and the
6 trust distribution procedures. And I've also mentioned
7 that the trust distribution procedures tell the trustees
8 to go about the business of creating claim forms, other
9 claim materials, instructions. For example, the trustees
10 will create websites typically that contain a great deal
11 of information to assist claimants in preparing their
12 claims and explaining to them how to go about completing
13 and submitting claim forms. They will -- they, the
14 trustees, will also create materials to further expedite
15 the submission of claims, like the creation of job site
16 lists that we've heard about already, and that
17 information often is published on a trust website.

18 Q. Just how does a claimant go about making a claim?

19 A. Well, it's possible to request and receive a paper
20 package to complete a claim in the old-fashioned way, but
21 most claims are submitted through the trust website.
22 They are completed online. The claimant or the
23 claimant's lawyer goes to the trust website, finds the
24 claims materials, and completes the claim form. And once
25 -- well, at any point in the process they can then submit

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1 the claim to the trust electronically for the trust's
2 consideration.

3 Q. Generally speaking, what does a trust claimant
4 have to show to make a successful claim based on
5 Mesothelioma? What elements?

6 A. They have to demonstrate that they have the
7 disease and they will have to supply the records for
8 that. They will have to demonstrate that they have, at a
9 minimum, worked at one of the job sites during the dates
10 that are set forth relating to that job site and that
11 they worked in a job that's recognized as being the kind
12 of job that would put them in the presence of asbestos at
13 that job site. And they have to identify the industry in
14 which they worked. And that's, you know, in a nutshell
15 what's required.

16 Q. You said earlier when a claimant files a trust
17 claim, the claimant doesn't necessarily assert that he or
18 she possesses proof of exposure to an asbestos-containing
19 product for which the debtor had liability prior to
20 organization. Why is that the case?

21 A. Well, there are three reasons. One is that -- one
22 is that one can file a claim and ask that it be deferred.
23 And at the time a deferred claim is filed, it typically
24 contains no information other than the name of the
25 claimant and the Social Security number. So a claim is

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1 filed and it's recognized as filed, but it contains
2 little or no information.

3 The second reason is that a claim can be filed and
4 it's deficient. The claimant, rather than ask that it be
5 deferred, submits it, and submits it despite the fact
6 that it's missing exposure information. And this
7 happens, remarkably, often.

8 And then, of course, the third reason is that it's
9 very common that the claimants will rely on the job site.
10 And the only information that the claimant needs to
11 supply or needs to have is information about where they
12 worked and when they worked there, and what they did at
13 that job site. And if that matches the information that
14 the trust maintains with respect to the job site, then
15 the claimant will have satisfied the trust's requirements
16 for exposure.

17 Q. You're referring here to site list claims?

18 A. Site list claims. Yes.

19 Q. What is a site list?

20 A. Well if we go to a website, and Babcock's a good
21 example, the website will provide you access to a list of
22 job sites at which Babcock acknowledges that workers have
23 been exposed if they've worked at those sites within a
24 specific date range appropriate for each site and in an
25 appropriate job. The list appears as part of the Babcock

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1 website. Most of the trusts have job sites.

2 Q. Let's take a look -- why don't we start with the
3 claim form?

4 A. Okay.

5 Q. And you can show us on the claim form how a site
6 list claim works, if you would.

7 A. So this is the Babcock and Wilcox claim form. The
8 first page or so, the first couple of pages, provides
9 identifying information. Page three provides a place for
10 completing the information with respect to the disease.
11 On page four, part three is the part of the claim form
12 where the exposure information is provided. And as you
13 can see here, the instructions, which are in the box,
14 tell us that for B&W exposure, there's a list of approved
15 B&W sites that's available on the trust's website.

16 If the site you are alleging exposure to B&W
17 products or services is not on the approved B&W site
18 list, then you have to provide supplemental information
19 such as an affidavit. But if you do find your job site
20 on the site list, focusing on item one below that box,
21 you'll see that the form asks you to select the site from
22 Exhibit A. There will be a code assigned to that site.
23 The code is placed here on the claim form.

24 If a site list is provided, the next bit of the
25 form is inapplicable. The name of the ship, plant, site

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1 of exposure is not required, and we skip to item two
2 where we put in the dates that one -- that the claimant
3 worked at the job site. It says date exposure began,
4 date exposure ended. What this is asking for, with
5 respect to a job site claim, is the date the worker
6 started working at the site and the date the worker
7 stopped working at the site.

8 On the next page, item three provides a blank for
9 filling in the occupation of the worker at the time the
10 worker was at that site. And then item four asks for the
11 industry, and the industry is selected from the code that
12 appears below. After one has completed that information,
13 one's completed all that's required with respect to a
14 claim that relies on a site list to satisfy the exposure
15 requirements of the trust distribution procedures.

16 Q. We've got an example of the B&W site list just so
17 you can show us.

18 A. Sure.

19 Q. If we can put that up on the screen.

20 A. So this is a B&W site list. If you'll highlight
21 across the top so we can see the header and a couple of
22 sites there. That didn't help much. Some of the entries
23 are a little cryptic. I suspect they mean more to the
24 claimants than they do to me. But they contain a site ID
25 number and then --

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1 Q. That's the code they have to put in?

2 A. That's the code, right, where it says site code on
3 the other page. Site ID is the reference that's used on
4 this form. The address where -- of the site. And then
5 as you go across, it asks -- it tells you the relevant
6 date range. Some of them have no start date. It asks,
7 also, or tells you information about the -- about the
8 type of site. For example, if it's a ship and it
9 provides some additional information. If it's out of the
10 country, for example, it'll tell you that. And I think
11 for Babcock we have, I think, over 44,000 sites. It goes
12 on and on.

13 Q. 44,000 sites?

14 A. I think that's right.

15 Q. Some of them are actual places on land. And
16 there's ships on here, too?

17 A. Right. If you -- I think a couple of pages in we
18 will get to a couple of ships. There we go. It tells
19 you there's a cargo ship on there; there's a train ferry
20 on there.

21 Q. So job sites can be places on land and also ships?

22 A. Also ships. That's correct.

23 Q. And the time that the claimant was at that job
24 site has to line up in some way with the dates that are
25 here on this site list; is that right?

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1 A. That's correct. If the claimant can't demonstrate
2 that the claimant worked at the job site during the
3 relevant dates, the claimant doesn't enjoy the
4 presumption that the job site provides.

5 Q. Does every trust have an approved site list?

6 A. Not every trust, but most of them do.

7 Q. Before we started talking about the site list
8 claims, you mentioned incomplete claims as a reason that
9 the mere fact that somebody filed an asbestos trust claim
10 is not an assertion that the filer at that point
11 possesses proof of exposure to a product to which the
12 trust is responsible.

13 A. Right.

14 Q. Can you explain a little bit more what you meant?

15 A. Well the trust will recognize as filed any claim
16 that has at a dead minimum the name, address and serial
17 number of the claimant. The filing of such a document
18 will trigger an automatic deficiency notice that will in
19 that case be a long list of deficiencies because no
20 additional information will be provided. The claimant
21 will be told to go about the business of clearing up the
22 deficiencies and that the claim won't be reviewed or
23 evaluated by a human until the deficiencies are resolved.

24 The claim then, in most of these trusts, then
25 falls over into a separate cue called the deficiency cue

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1 or second review cue. A claim can be deficient for as
2 long as the claimant wants it to be deficient. It can
3 stay in that status for years, and some do. Some are
4 never resolved. They just linger as a deficient claim.

5 Q. So if somebody fills out the trust claim form
6 online with insufficient information and doesn't do
7 anything more, it will stay indefinitely in that
8 circumstance?

9 A. That's correct. There is no -- there is no
10 sunset.

11 Q. Is there -- are there provisions regarding
12 withdrawal or deferral of trust claims?

13 A. A claim can always be withdrawn, and many are. A
14 claim can also be deferred, as I mentioned. And by the
15 way, a withdrawn claim could -- can be a claim of any
16 sort. Even a claim that's clear nearly completed or
17 completed can be withdrawn for whatever reason it needs
18 to be withdrawn. So we know nothing about, in
19 particular, about the content of that claim.

20 A claim can also be put on deferral status at the
21 request of the claimant. And the trusts simply provide
22 that the claimant will have a right to be on deferral
23 status for up to three years. It's designed to allow
24 claimants to take that time to complete the claim in an
25 orderly fashion.

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1 Once the claim is complete and they ask that it be
2 taken off of deferral status, it doesn't go into the
3 deficiency cue. It immediately drops into the cue for
4 review as a first time claim, and that can be a
5 significant advantage.

6 Q. It's probably pretty obvious from what you said.
7 Does every claim that gets filed with a trust result in a
8 payment?

9 A. No.

10 Q. Do we have some data in this case that
11 demonstrates that?

12 A. We do. I understand that data with respect to
13 Mesothelioma claims filed across multiple trusts has been
14 compiled. And this reflects on a percentage basis the
15 number of claims in the six status categories identified
16 there: Approved, deferred, deficient, disallowed, in
17 review, and withdrawn. This represents the percentage of
18 claims in the trusts identified on the left -- there's a
19 header that says "subfund," that's a reference to the
20 fact that some of the trusts have multiple sub-trusts.

21 As of the moment that this data was collected and
22 analyzed, up to that point in time, since the beginning
23 of these trusts, 62.6 of the claims have been approved,
24 37.4 of the claims were in some other status, but
25 something other than approval, 13 percent had been

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1 withdrawn, 13 and a half percent were at that moment
2 deficient, 4.7 were in a deferral status, 4.9 percent
3 were in review, and 1.3 percent were disallowed.

4 There are -- very few of the trusts have a
5 mechanism that contemplates outright disallowance. The
6 idea is that we try to give claimants every chance we can
7 to complete their claims and submit them. If the
8 individuals have asbestos diseases and have legitimate
9 claims or can work them up, we want them to get paid.

10 Q. Looking at this, it gives us some evidence that
11 not every trust claim filing results in a claim being
12 approved and paid.

13 A. That's certainly true.

14 Q. Thank you, Mr. Patton. I'll pass the witness.

15 THE COURT: It's 5:30. I think we better quit for
16 today. We'll be back -- I guess, since we don't have to
17 move, we don't have to start early. Would it help you-
18 all to quit early on Friday? Some of you going home or
19 anything? So you want to start at nine in the morning
20 and nine Friday morning and then quit at 4:30 Friday?
21 Does that work?

22 MR. WOLF: That's fine, Your Honor.

23 THE COURT: Okay. That's what we'll do then.
24 We'll start at 9 o'clock tomorrow morning, and we'll
25 break for lunch at 12:30. Okay?

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(Off the record at 5:33 p.m.)

CERTIFICATE

I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, LLC, et al, Bankruptcy Case No. 10-BK-31607, on August 7, 2013.

In witness whereof, I have hereto subscribed my name, this 8th day of August 2013.

___/S/___Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER